



Government of Western Australia
Department of Lands

Land Administration Amendment Bill 2016

Consultation Paper



Table of Contents

Executive Summary	5
Part 1 - Statement of the Issue.....	10
1.1 Introduction: The Need for Change in the Rangelands.....	10
1.2 Background: The Western Australian Rangelands	11
1.3 Government Cost of Administration of State Land.....	12
1.4 The nature of and issues associated with pastoral activity in the Rangelands	13
1.5 Diversification activity in the Rangelands.....	17
1.6 The significance and risks of a status quo pastoral industry	18
1.7 Why the problem cannot be addressed through the market	19
Part 2 - Objectives.....	21
2.1 Policy Objectives	21
2.2 Current Regulations and Policies.....	21
2.3 LAA Review	22
Part 3 - Options to Address the Issue.....	23
3.1 Options for addressing the issue	23
3.2 Analysis of the Options	23
3.2.1 The status quo and the implications of maintaining it.....	23
3.2.2 Non-regulatory Options	28
3.2.3 Proposed Regulatory Options	30
3.3 The Proposed Legislative Amendments	31
3.3.1 Rangelands lease	31
3.3.2 Statutory Right of Renewal for Compliant Pastoral Leases.....	32
3.3.3 Increase the Term of a Pastoral Lease	34
3.3.4 Statutory Transfer of Permits Issued under Division 5 Part 7 to an Incoming Lessee	35
3.3.5 Requirements to Provide a Management Plan for a Pastoral Lease	35
3.3.6 Powers to Investigate Compliance with Lease.....	36
3.3.7 Land Condition Monitoring	37

3.3.8 Future Governance of the Rangelands	38
3.4 Other Regulatory Options (investigated - not proposed to be adopted).....	41
3.5 Other Jurisdictions	43
3.5.1 Reasons for different WA approach	44
3.6 Existing State, Local and Federal Policies	45
3.7 Extent of significant duplication or incongruity	47
4. Impact Analysis	49
4.1 Costs to Business	49
4.1.1 Native Title	49
4.1.2 Rent and Rates	50
4.1.3 Other Costs to the Pastoral Industry	51
4.2 Costs to Consumers, the Community, Economy and the Environment	52
4.2.1 Stakeholder impacts.....	53
4.2.2 Small Business Development Corporation	56
4.3 Costs to Government.....	57
4.4 Benefits.....	59
4.5 Costs verses Benefits	60
4.5.1 Quantification of costs.....	60
4.5.2 Quantification of Benefits	62
4.6 Extent to which options achieve the objectives.....	63
Summary of Discussion Points.....	65
5. Consultation	67
5.1 Method of Consultation.....	67
5.2 Discussion Papers and responses received	68
5.3 Additional consultation undertaken	70
5.4 Next Stage of Consultation	71
6. Preferred Option.....	73
6.1 Preferred Option	73
6.2 Compliance Costs.....	73
6.3 Impact on and Co-existence with Other Regulation.....	74
7. Implementation and Evaluation Strategy.....	75
7.1 Implementation	75
7.2 Performance Indicators.....	75

7.3 Baseline data / Information	76
7.4 Legislative Review	76
REFERENCES.....	77

Executive Summary

Rangelands include all those environments where natural ecological processes predominate and where values and benefits are based primarily on natural resources. They are areas which have not been intensively developed for primary production. The rangelands of the semi-arid and arid zones cover approximately 75 per cent of the Australian continent and equate broadly with the 'Outback'. However, rangelands also occur in higher rainfall areas where limitations other than rainfall restrict use to management of the natural landscape (Australian Rangeland Society website).

In Western Australia, the Rangelands cover more than 2.3 million square kilometres or 87% of the state's landmass, but are home to less than 250,000 people or less than 10% of the state's population (ABS 2013).

The WA Rangelands include the regions of the Kimberley, Pilbara, Gascoyne, Mid West, Goldfields, Nullarbor and Interior. They extend across low rainfall and variable climates, including arid and semi-arid regions in the south and east, as well as some seasonally high rainfall areas north of the Tropic of Capricorn. They include a diverse group of relatively undisturbed ecosystems such as tropical savannas, woodlands, shrublands and grasslands (Department of the Environment).

For over a century, the predominant use of just over a third of the Western Australian Rangelands has been pastoralism, entailing the grazing of sheep and cattle on the natural vegetation found in each region. During this period, economic, social and environmental realities have changed, as highlighted by the Southern Rangelands Pastoral Advisory Group, which concluded in 2009 that in some parts of the rangelands:

there has been a loss of palatable perennial shrubs and an increase in erosion on vulnerable, usually productive, landscapes: a result of inexperience, mismanagement and poor administration, especially damaging during extended dry periods ... the expectations of government and the general public of the rangelands have transitioned through encouraging settlement, to promoting economic development, to ecological sustainability.

While these changing expectations have been reflected in the respective land administration legislation, currently the Land Administration Act 1997, there has been a clear failure to either reverse the decline in the condition of the resource or achieve the objective of sustainable land use.

The complex, expensive and time consuming processes required for establishing alternative enterprises, even under the current permit system, are a substantial disincentive to diversification.

Maintaining restrictive approaches to land use is no longer appropriate in the southern rangelands. Development of diversified enterprises and land use is considered to be the most realistic means of sustaining pastoralists and remote communities into the future. Such change requires a fundamental shift in the land tenure system to one that allows multiple uses based on well researched business options and good practice environmental management, underpinned with appropriate legislation. (SRPAG 2009)

The purpose of this Consultation Paper is to outline the rationale for the State Government's proposed amendments to the LAA to establish modern land tenure arrangements. In summary, the objectives of the proposed amendments are to:

1. Promote sustainable economic development in the Rangelands;
2. Facilitate diversified activities in the Rangelands by both current occupants and new entrants;
3. Improve the management and condition of Rangelands vegetation and landscapes;
4. Improve security of tenure and provide avenues for economic diversification for existing pastoralists; and
5. Modernise governance arrangements for the Rangelands.

In essence, the proposed reform measures will support an improvement in the economic capability and physical condition of the Western Australian Rangelands, by providing the mechanism for lessees to pursue diversification beyond that currently allowed for through permits issued under Division 5, Part 7 of the LAA.

Without change, the rangelands economy faces deteriorating terms of trade, lost opportunities, an inability to remain competitive in traditional industries, lack of stimulus for innovation and, in some areas, continued degradation of the rangelands resource. This will ultimately be detrimental not only to rangelands communities, but to the State as a whole. As primary producers, exporters, and land-carers, pastoralists need both security and the ability to be flexible in the face of commodity price fluctuations and uncertainty due to seasonal variation. The LAA should provide the legislative framework to assist pastoralists to achieve this.

As part of the process of analysing opportunities for change, a review was undertaken into the way in which the Rangelands have been managed. That review identified a lack of detailed information on the condition of the land under a pastoral lease as one of the reasons for the decline in health of the rangelands over time. Therefore, new compliance and land management provisions are being inserted into the LAA as part of the Rangelands Reform program.

Additionally, in order to reflect properly the proposed new tenure and management provisions, a new, modern system of governance is proposed. The current situation, in which the Pastoral Lands Board (PLB) possesses powers exclusive of the Minister, is anomalous with respect to accepted practices regarding the powers of Government boards and committees. In addition, the representative nature of the composition of the PLB gives rise to actual, potential and perceived conflicts of interests particularly for pastoral interest members on the PLB.

Consequently, the Minister for Lands proposes that the PLB be dissolved, with the Minister assuming the roles and responsibilities of the Board. In addition, a skills-based Pastoral and Rangelands Advisory Board (PARAB) will be established, which will be constituted in a similar manner to the Biosecurity Council and act purely in an advisory capacity. The powers currently vested in the PLB, including those compelling the Minister for Lands to consult the PLB prior to making certain decisions, will be vested with the Minister.

This proposed amendment is effectively a logical extension of the PLB's strategic plan, which envisions a reform framework similar to that proposed by the Rangelands Reform program. However, unlike the PLB, the PARAB will be in a position to extend its scope beyond the pastoral industry, as a result of its broader remit and membership.

Three options have been considered to address the problem of ensuring economically viable and ecologically sustainable Rangelands. These are:

1. Retain the Status Quo— no action taken to address the issues, including no legislative changes.
2. Non-Regulatory Option – amendments to administrative processes only, to enhance streamlining and reduce red tape, and possible education programs.
3. Regulatory Option – introduction to the LAA of new lease options and other arrangements:

The earlier phase of the Rangelands Reform Program resulted in the implementation of a number of measures aimed at streamlining existing legislation, including for instance:

- reduction of the referral time for pastoral diversification permits from 42 days to 28 days;
- development of a Pastoral Purposes Framework, to assist pastoral lessees in determining what permissions may be required to carry out diversified activities on their leases and the relevant processes; and

- development of a Land Tenure Pathway for Irrigated Agriculture, to assist proponents (including pastoralists and third party investors) to obtain land tenure for irrigated agriculture projects.

While the Department of Lands continues to explore non-regulatory options, modelling indicated that the economic benefits of regulatory changes to the current tenure arrangements could be significant. Proposed amendments aimed at improving the economic viability and ecological sustainability of the Western Australian Rangelands include:

1. **Rangelands Lease:** a new form of tenure which will allow for multiple and varied uses of the Rangelands, provided that use is broad scale and consistent with the preservation and ongoing management of the Rangelands as a resource.
2. **Statutory Right of Renewal for Compliant Pastoral Leases:** the Minister must renew a pastoral lease for the same term if there is no outstanding breach of the lease, the LAA or rangeland condition monitoring requirements.
3. **Ability to Increase the Term of a Pastoral Lease:** to allow pastoral lessees to increase the term of their lease, up to a maximum of 50 years.
4. **Transfer of Diversification Permits:** Pastoral lessees will be able to transfer any diversification permits to the incoming lessee when they sell their lease.
5. **Rangeland Condition Monitoring:** Changes required for the implementation of a modern rangelands monitoring system, combining remote sensing with on-ground site monitoring by lessees. As part of this system, pastoral and rangelands lessees will be required to provide photographs of designated monitoring sites once per year with their Annual Return.
6. **Governance:** Changes to modernise the governance of rangelands administration include:
 - The Pastoral Lands Board will be dissolved and its powers vested in the Minister for Lands;
 - A new Pastoral and Rangelands Advisory Board will be established to provide the Minister with strategic advice; and
 - Pastoral lessees will have a right of appeal to the State Administrative Tribunal (SAT) if the Minister decides not to renew their lease, or to renew on conditions, due to non-compliance

Any proponents will be able to apply for the proposed rangelands lease. This includes not only pastoral lessees wishing to “convert” their current lease in order to

diversify their business beyond grazing, but also other parties wishing to conduct broadscale activities other than grazing. For current pastoral lessees, both the rangelands lease and the ability to extend the term of a pastoral lease are optional, in that pastoral lessees may elect to stay with their current form of tenure at their discretion.

An administrative process will apply for either option, to satisfy the requirements of both the LAA and the relevant future act process will need to be completed under the *Native Title Act 1993 (Cth)* (NTA).

A consultation process has been undertaken with a range of stakeholders since the inception of the Rangelands Reform project in 2010. Key stakeholders consulted via verbal briefings to date include the Chamber of Minerals and Energy, Conservation Council of WA, Native Title representative bodies, Pastoral Lands Board, Pastoralists and Graziers Association of WA (PGA), Western Australian Farmers Federation, WA Local Government Association, the Environmental Protection Authority, the WA Tourism Council, the Australian Bankers Association and others.

DoL intends on releasing the Consultation Paper for public comment, together with a draft of the amendment Bill. In conjunction, a final round of stakeholder consultation to be held in 2016. DoL intends to introduce the draft Bill incorporating the above amendments into Parliament in 2016.



Part 1 - Statement of the Issue

1.1 Introduction: The Need for Change in the Rangelands

The Western Australian Rangelands are facing ongoing challenges. These challenges include historical and ongoing land degradation, caused by a range of factors including a drying climate, natural disaster, historical and actual overgrazing of the land, and others. As a result, the unique ecological values of the Rangelands are under threat, and as a corollary, so too are the livelihoods of those pastoralists whose living is made grazing stock on the natural vegetation found in the Rangelands, and others who provide services to them.

At present, economic activity on the Rangelands beyond mining is mostly limited to one form of economic activity – the grazing of stock. This state of affairs has left the rangelands economy particularly vulnerable to market volatility. This section demonstrates this point by examining the effect of the ban on live cattle export to Indonesia on the pastoral industry. A single product economy is not sustainable; diversification is key.

However, diversification on a broad scale cannot occur in the current legislative environment that governs land tenure in the Rangelands. The *Land Administration Act 1997* (LAA) restricts broad scale land use to pastoralism through the conditions placed on pastoral lease tenure issued under Part 7 of that Act. Given the restrictions in the LAA, a lessee can only run stock and diversify on a small-scale basis into a limited range of activities that must be supplementary to the pastoral purpose of the lease.

If the land is degraded, the lessee is restricted to doing little more than run stock in order to earn the money required to help remedy the condition of the land. This feeds into the cycle of land decline, with the problems already in existence becoming exacerbated by the requirement to run stock. The lack of an ability to engage in activities on the land *apart from* the running of livestock is a major contributing factor to declines in the condition of the rangelands resource.

Additionally, diversification has also been affected by other factors, such as the prevalence of wild dogs in the Rangelands. This scourge has forced many pastoralists in the Southern Rangelands to shift from small stock (sheep) to larger animals, mostly cattle, due to the ability of cattle to defend themselves from wild dog attack. As a result, the diversity of economic activity in the Rangelands that previously existed (sheep and cattle occupy two very different livestock markets, both locally and internationally) has been eroded.

The evidence in this section demonstrates that change is needed to combat the issues highlighted above, and address others. This section explains the current state of the Western Australian Rangelands, provides evidence of the issues, costs, and benefits of current land uses and legislation of relevance to the Rangelands, and argues for change. Part 3 provides the details of three separate options in relation to confronting the issues that exist on the Rangelands:

1. **Retain the Status Quo:** this option presupposes that nothing changes and that better enforcement of the current laws should address the issues.
2. **Non-Regulatory Option:** amendments to administrative processes only, to enhance streamlining and reduce red tape, and possible education programmes.
3. **Regulatory Options:** introduction to the LAA of new lease options and other arrangements.

1.2 Background: The Western Australian Rangelands

Rangelands include all those environments where natural ecological processes predominate and where values and benefits are based primarily on natural resources. They are areas which have not been intensively developed for primary production. The rangelands of the semi-arid and arid zones cover approximately 75 per cent of the Australian continent and equate broadly with the 'Outback'. However, rangelands also occur in higher rainfall areas where limitations other than rainfall restrict use to management of the natural landscape (Australian Rangeland Society website).

The Western Australian Rangelands occupy 87 per cent of the State's landmass (approximately 2,325,000 square kilometres), with rangelands present in all regions excluding the South West agricultural area. However, the WA Rangelands are sparsely populated, being home to less than 250,000 people or less than 10% of the State's population (ABS 2013).

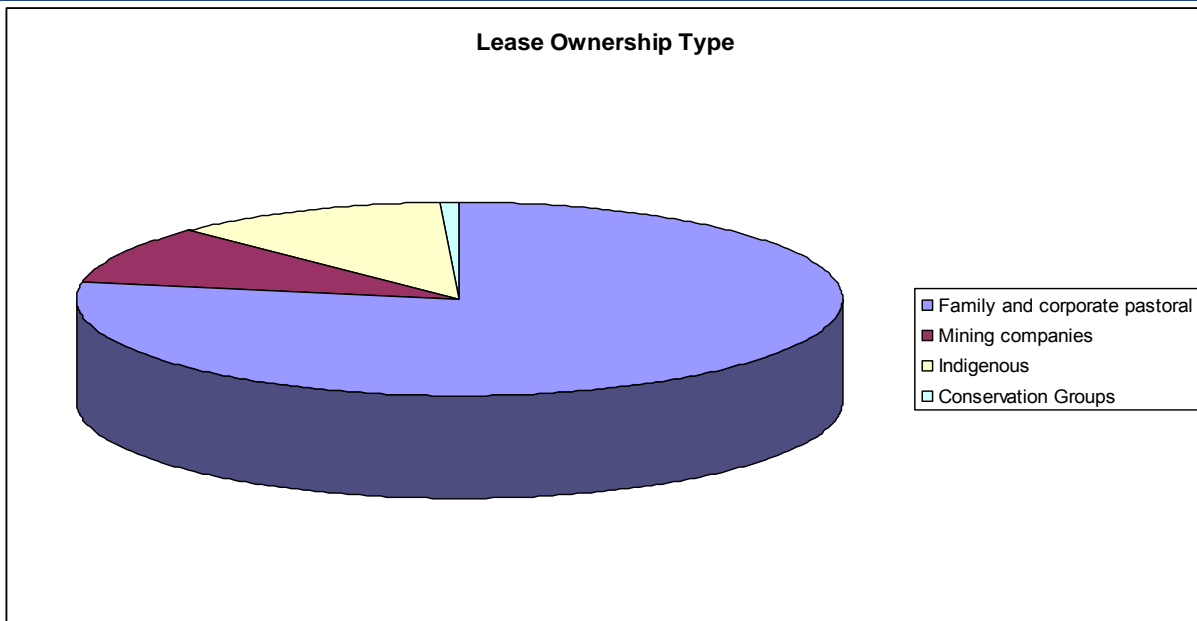
The WA Rangelands include the regions of the Kimberley, Pilbara, (Northern Rangelands) and the Gascoyne, Mid West, Goldfields, Nullarbor and Interior (Southern Rangelands). They extend across low rainfall and variable climates, including arid and semi-arid regions in the south and east, as well as some seasonally high rainfall areas north of the Tropic of Capricorn. They include a diverse group of relatively undisturbed ecosystems such as tropical savannas, woodlands, shrublands and grasslands (Department of the Environment).

Economic activity in the Rangelands is of high value to the State: the bulk of the State's multi-billion dollar mining industry, as well as livestock and wool production through pastoralism are based in the Rangelands. In addition, horticultural crop production, and tourism are key elements of the economy of the Rangelands.

Pastoral leases, a major feature of the Rangelands, represent 34.4 per cent of the State (or around 870,000 square kilometres) being used for grazing livestock on native vegetation. Unallocated Crown Land (UCL) is the largest category of land tenure in the Rangelands outside the pastoral estate, amounting to almost 37 per cent of the State's land mass (around 935,000 square kilometres). The other major land tenure in the Rangelands is reserves, the majority being for conservation or Indigenous purposes.

As at 1 July 2015, there were 435 pastoral stations consisting of 493 leases (some stations contain more than one lease). Of the 493 pastoral leases, 50 are held by mining companies, 60 by Indigenous corporations and 5 by conservation groups. The balance is held by individuals, and family and other corporate businesses that are principally engaged in livestock production. Figure 1 illustrates that family based and corporate entities are the predominant group involved in pastoralism.

Figure 1. Lease ownership categories



Source: Department of Lands Pastoral Lands Unit

1.3 Government Cost of Administration of State Land

Table 1 shows the total cost of administering State lands in 2012-13, 2013-14, and 2014-15.

Table 1. The cost of administering the Department of Lands, Government of Western Australia

Expense Category	2012-13	2013-14*	2014-15
Employee Benefits	14 308 000	16 120 000	20 012 000
Grants and Subsidies	900 000	701 000	15 280 000
Accommodation	2 290 000	2 230 000	2 403 000
Supplies and Services	11 208 000	12 666 000	14 490 000
Depreciation and Amortisation	191 000	39 000	30 000
Other	1 033 000	1 534 000	354 000
Loss on Disposal of Assets			3 000
	29 930 000	33 290 000	52 572 000

Source: Department of Regional Development/Department of Lands annual reports. *Note: 2013-14 costs exclude a one-off Impairment Loss of \$132.928m as a result of the pastoral land estate revaluations.

1.4 The nature of and issues associated with pastoral activity in the Rangelands

Historically, pastoralism is the predominant land use in the Western Australian Rangelands. The nature of the industry has changed in the last two decades, with the traditional dominance of sheep being replaced by cattle as illustrated in Figure 2. However, total grazing pressure from livestock has increased from around 1 million to around 1.25 million cattle units (cu) over this period. The graph masks some regional trends, with livestock numbers in the Southern Rangelands (the rangelands south of the Pilbara) declining but increasing in the Pilbara and Kimberley.

One significant driver of this change was the live cattle trade to Indonesia, which began to develop significantly in the early 1990s (Martin et al, 2007). In 2011 the Commonwealth Government temporarily suspended live animal exports to Indonesia, following media coverage of animal welfare issues in abattoirs in that country.

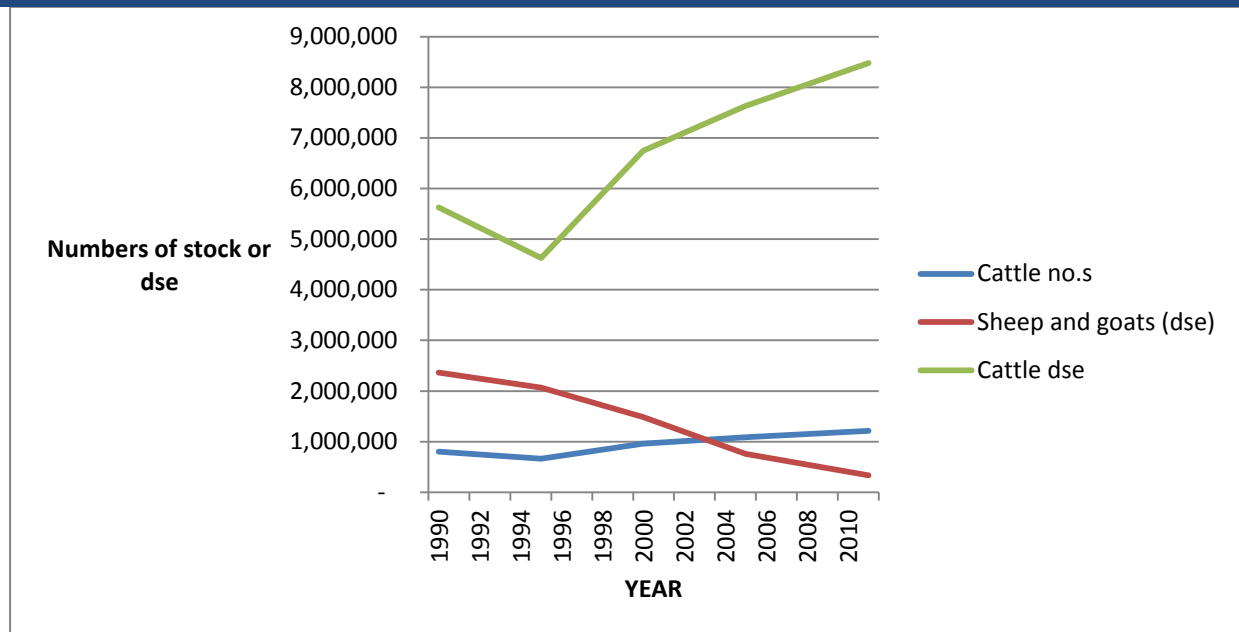
While the suspension was lifted within months, trade resumed with significantly lower import quotas. Data indicates numbers of cattle loaded from Western Australian ports dropped sharply in 2011. Prices for live cattle also dropped significantly after 2010, as a 2014 report by the Commonwealth Department of Agriculture (ABARES: 47) revealed. The report noted that the value of live cattle exports from Western Australia dropped by 34 per cent from 2010 to 2013.

Such a revenue drop particularly affected Western Australian pastoralists, due to the fact that farm businesses in the Kimberley, Pilbara and Murchison-Gascoyne regions of the Western Australian Rangelands "derived more than 50 per cent of their total beef cattle receipts from sale of cattle for live export, on average, in the three years ending 2012-13" (ABARES 2014: 43).

However, the Australian Government's *Our North, Our Future: White Paper on Developing Northern Australia* (2015: 98) expects the live animal export industry to

grow from its current value (\$685.5 million) in the coming years. The 2014 ABARES report revealed that 81 per cent of Australia's live cattle exports were destined for South-East Asia, while only two per cent of Australia's sheep exports go to that region; the other 98 per cent goes to the Middle East (ABARES 2014: 14; 22).

Figure 2. Trend in cattle and small stock numbers in the Western Australian Rangelands in seven year intervals from 1990. Note cattle are expressed in both numbers and dry sheep equivalent (DSE), with 1 cattle unit equivalent to 7 DSE.



Source: Department of Regional Development Pastoral Lands Unit annual livestock returns.

Factors causing the replacement of sheep with cattle in the Southern Rangelands include the impact on sheep flocks of increased numbers of uncontrolled wild dogs and the generally depressed markets for wool since the collapse of the wool market in 1990.

Pastoral production has declined in some areas, particularly the Southern Rangelands, over the past 10 years. However, there has been an increase in total production overall, with increased cattle numbers, as figure 3 demonstrates. This apparent contradiction is due to a number of factors.

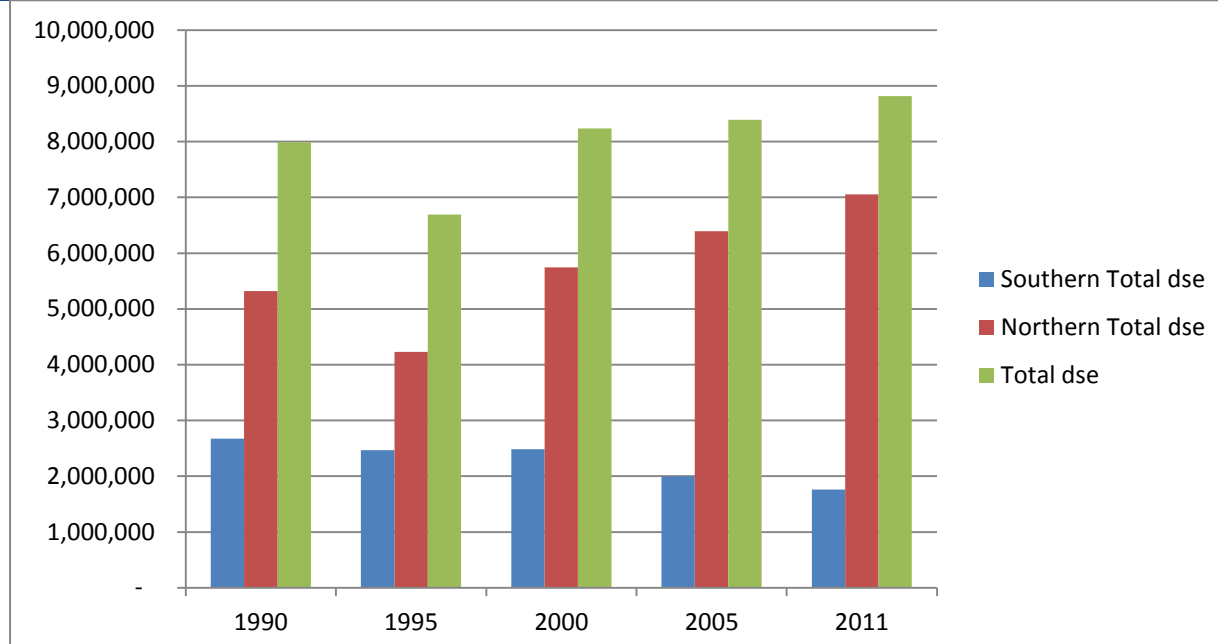
Pastoral stations in the Southern Rangelands traditionally ran sheep. However, in recent decades, cattle have been replacing sheep, in part due to the live cattle trade with Indonesia, increasing the number of cattle across the Rangelands. The impact of drought and wild dog predation on small stock have been factors in the decline of productivity on the Southern Rangelands (SRPAG Review, 2009), as has the long period of overgrazing of the Southern Rangelands throughout the 1960s through to the 1980s. The consequences of this overgrazing are still being felt, while the decline in the wool industry from 1990 onwards, chiefly due to the collapse of the

Reserve Price Scheme for wool, has also been a factor (*DoL Submission to Parliamentary Inquiry into Pastoral Leases, 2013: 13; 17*).

By contrast, in the Northern Rangelands, the Kimberley has experienced a run of good seasons with the quality of perennial grasses being maintained, albeit with the caveat that the Soil and Land Commissioner warned in his 2012 report that less favourable conditions could lead to a rapid decline in rangeland conditions in the future. In the Pilbara, there has been a mix of good and below average seasons (*Pastoral Land Condition Report, 2010-11*).

Northern cattle producers have invested in herd building to support the growth in the live trade. Studies have shown that herd building in the Pilbara has been to the detriment of the natural resource of the Rangelands and that increasing herd size has not been able to deliver improved profitability in terms of business performance without also increased direct costs and accumulation in business liabilities (McCosker et al, 2010 and *Pastoral Land Condition Report, 2010-11*). McCosker et al (2010) also noted average beef producers have spent more than they earn in six out of the last seven years. In their study of the northern Australian cattle industry, based on Queensland and Western Australian data, McCosker et al (2010) noted that the poor performance of the extensively managed breeder herd was the major contributor to poor business performance. However, the top 20% of businesses were still profitable, and were characterised by larger properties, higher productivity per animal rather than per hectare, lower stocking rates and lower overheads.

Figure 3. Total DSE for the Northern and Southern Rangelands between 1990 and 2011.



Source: Department of Regional Development Pastoral Lands Unit annual livestock returns. No new statistics are presently available.

Table 2 shows the value of pastoral production for 2008 - 2011. Unfortunately, assembling comparative value of production data from the last ten years to indicate the longer term trend was not possible. The pastoral data has experienced different methods of aggregation over this time, meaning the results produced are not comparable. Therefore, while it is not entirely valid to draw comparisons over a short time frame, this data is consistent with the upward trend in numbers, and also demonstrates the recent sharp drop in small stock production.

Once again, this drop is more than made up for through increased cattle sales in the following year. Drawing conclusions from increases in pastoral production over this time frame can be misleading. Livestock turnoff commonly increases as a response to drought, which occurred in the Southern Rangelands in 2009 - 2010.

Indeed, while the upward trend in total stock both in gross value of production and actual numbers would suggest the pastoral industry is doing well, this belies the regional disparity between the Northern and Southern Rangelands. As indicated in Figure 3 above, the Southern Rangelands previously ran approximately half or better the number of stock run on the Northern Rangelands. However, since 1995, the decline in stock numbers on the Southern Rangelands, and the rise in the Northern Rangelands, has been so spectacular that Southern Rangelands stock numbers have fallen well below a third of the Northern Rangelands herd in 15 years.

Table 2. Gross value of agricultural production for pastoral commodities in Western Australia over the last three survey years.

Pastoral Commodity Sales (Gross Value of Agricultural Production)	2008-09 \$ million	2009-10 \$ million	2010-11* \$ million
Cattle	180	258	312
Wool	34	16	12
Sheep	14	17	16
Goats	12	5	6
TOTAL	240	296	346

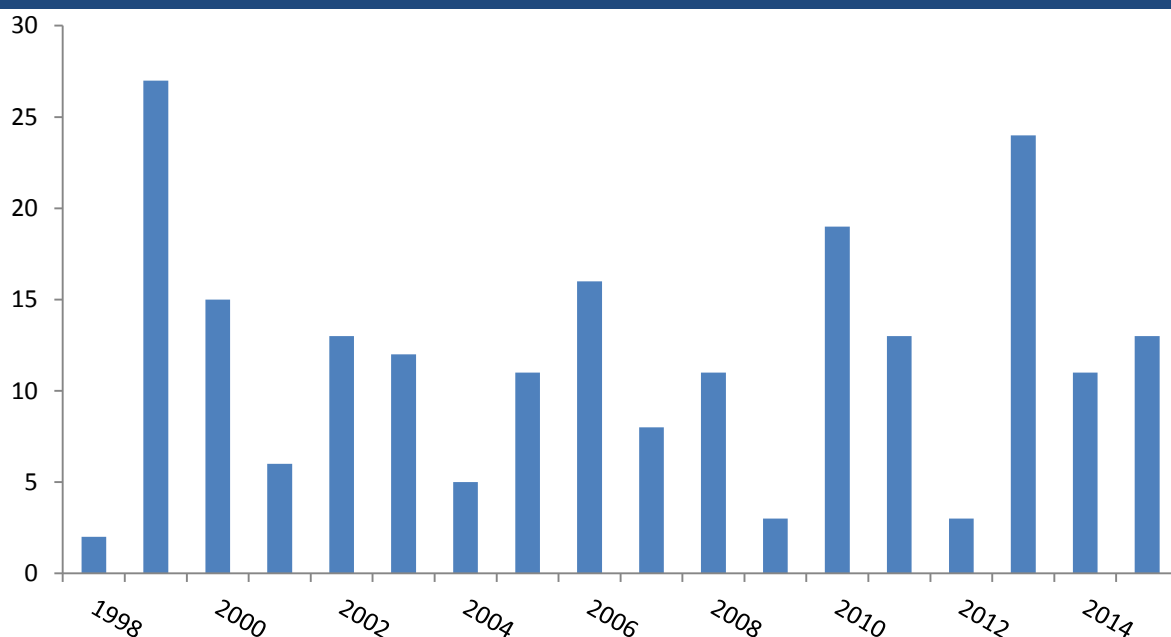
Source: ABS Agricultural Survey: Value of Agricultural Commodities Produced (VACP) by Australia, State and NRM Estimates: With DAFWA input for 2008-09 and 2009-10. *Note that for the 2010-11 year, data has been sourced from ABS on the basis of regional groupings. Assumptions made about the split in production between pastoral and agricultural properties for the Midwest and Goldfields-Esperance regions may differ to those in previous years. More recent figures are, at present, unavailable.

Therefore, while the overall picture of the pastoral industry may appear to be one of solid growth, the reality is that there is a marked disparity between the Northern and Southern Rangelands. Additionally, there are disparities between leases, even within the Northern Rangelands, that indicate that the success of the pastoral industry is not evenly distributed. Therefore, for some less successful stations, diversification may be the only method available to turn their businesses into profitable concerns.

1.5 Diversification activity in the Rangelands

Diversification activity has been estimated from data made available by the Department of Lands. Figure 4 shows the numbers of diversification permit applications received per annum since 2006. Prior to 2006, there were higher numbers of applications for tourism than other categories. The data indicates that since 2005 comparatively few opportunities were sought and that agriculture is the most sought after category. The peak in 2009 occurred following the Department of Regional Development seeking expressions of interest regarding which diversification opportunities pastoral lessees wanted to pursue. This initiative resulted in a minor surge in diversification permit applications.

Figure 4. Permit applications received by the Pastoral Lands Board since 1998.



Source: Department of Lands Pastoral Lands diversification permits data to 1 July 2015

However, permit applications are not the only way to measure diversification activities on pastoral leases. The Department of Lands and its predecessor agencies have received, and granted, a number of applications for higher or different forms of tenure on pastoral leases in order to enable higher intensity, generally non-pastoral, activities on the land. Some of these activities have been on-off and low

impact, such as off-road car rallies and other tourist events, while others have been long-term in nature and have attracted significant investment, such as tourism ventures and intensive irrigated agriculture.

Table 3: Part 7, Division 5 permits by type that are currently active and being utilised as at 17 September 2015

Section	Permit type	Number as at 17/9/15
119	Permit to sow non indigenous species	2
120	Permit for agriculture activities	34 Irrigated: 29 Dryland: 5
121	Permit for pastoral based tourism	45
122	Permit for non-pastoral use of enclosed or improved land	13
Total :		94

Source: Department of Lands Pastoral Lands diversification permits data to 17 September 2015

Table 3 shows the range of diversification activities being undertaken on pastoral leases under a permit issued under Division 5 of Part 7 of the LAA. The table demonstrates that the two categories of permit that are currently active are for agricultural activities and pastoral based tourism, accounting for 84 per cent of all active permits.

1.6 The significance and risks of a status quo pastoral industry

The State Government launched the Kimberley Science and Conservation Strategy in September 2010. Consequently, the Department of Regional Development and Lands (RDL) in consultation with the Departments of Environment and Conservation (DEC), Mines and Petroleum (DMP), Aboriginal Affairs (DAA), Agriculture and Food (DAFWA), and the then Office of Native Title, was asked to develop drafting instructions to amend the LAA to allow pastoral lessees to have increased capacity to diversify their operations. Consistent with the direction provided under the Kimberley Science and Conservation Strategy, the Rangelands Reform Program commenced work in December 2010.

The Kimberley Science and Conservation Strategy effectively requested the fast-tracking of solutions to problems regarding rangelands tenure identified in previous reviews of the pastoral industry. That is, that the current provisions under Part 7 of the LAA limit the activities that can be conducted on pastoral leases in the Rangelands to pastoral purposes: the grazing of authorised stock such as cattle and sheep, with limited diversification options allowed through permits.

The momentum for a Rangelands Reform Program arose from two reviews into the pastoral industry in 2009. These reviews, initiated by the Minister for Agriculture and Food, were the Southern Rangelands Pastoral Advisory Group's (SRPAG) *A Review*

of the Economic and Ecological Sustainability of Pastoralism in the Southern Rangelands of Western Australia, chaired by the Hon Wendy Duncan MLC, and *A Review of the Process to Permit Diversification on Pastoral Leasehold Land in Western Australia*.

It is clear from these reviews, and others conducted as long ago as 1979, i.e. *The Present and Future Pastoral Industry of Western Australia* (Jennings, B.G., 1979), that similar issues persist. These include:

- that the sustainability and capacity of the pastoral industry in many areas of the Rangelands is increasingly under threat; and
- that the potential exists to increase investment in the Rangelands through enabling improved access to diversification options and improved security of tenure.

The pastoral rangelands have been significantly impacted by degradation of soil and vegetation and loss of biodiversity from overgrazing; coinciding in most instances with significant drought events. While the rangelands are rarely overgrazed in good seasons, damage can be significant if grazing continues unabated during periods of drought (McKeon, G.M. et al, 2004). Under the LAA, pastoral lessees are responsible for destocking during drought as part of managing the land. The Pastoral Lands Board (PLB) is responsible for monitoring and ensuring lessees are performing this task appropriately.

As demonstrated previously, pastoral production has declined in some areas, especially the Southern Rangelands, over the last ten years. Additionally, some areas of the Northern Rangelands have tended to overstock, to the detriment of the natural environment and with mixed results from a financial perspective. Based on this evidence, leaving the status quo unchecked will result in further degradation of the land systems that are the most productive from a pastoral viewpoint, although it is not restricted to these systems. Resource condition assessments across most areas of the pastoral rangelands over several decades have shown that over 7,000 square kilometres of the Western Australian rangelands are severely degraded and eroded and 25 per cent has been classified as being in poor condition (Van Vreeswyk et al, 2004).

Therefore, significant areas of the rangelands will require alternative management strategies if they are to be productive in the present or future; these areas will require rehabilitation or, alternatively, other land uses should be considered.

1.7 Why the problem cannot be addressed through the market

The normal operation of the market is unable to remedy the many problems extant on the rangelands, because the market is restricted by legislation. The legislation limits or shapes market transactions in ways that are no longer optimal for pastoralists or the State.

Sections 106(1) and 108(1) of the LAA restrict the market by requiring that

[106(1)] a pastoral lessee must not use land under the pastoral lease for purposes other than *pastoral purposes* except in accordance with a permit issued under Division 5; and

[108(1)] a pastoral lessee must, to the satisfaction of the (Pastoral Lands) Board, at all times, manage and work the land under the lease to its best advantage as a pastoral property;

Further, Section 108(2) adds that the

lessee must use methods of best pastoral and environmental management practice, appropriate to the area where the land is situated, for the management of stock and for the management, conservation and regeneration of pasture for grazing.

Therefore, the current restrictions exclude the operation of the market where it is not reasonably related to pastoral activities, requiring that all such activity only be subsidiary.

Applying a liberal interpretation to the nature of the activity or its subsidiarity is unlikely to address the problem, due to the likelihood of challenge, i.e. where it contravenes the LAA or other legislation. The proposed reform measures provide a mechanism for pursuing other options, thereby freeing up the market to encourage activities that improve the economic viability and ecological sustainability of the Rangelands.



Part 2 - Objectives

2.1 Policy Objectives

The policy objectives are to stimulate environmentally sustainable economic development in the Rangelands and provide an incentive for increased investment, innovation and employment. For amendments to Part 7 of the LAA, the aim is greater administrative efficiency and a modern governance framework for the pastoral estate.

The principles upon which the proposed amendments are based include:

1. The rangelands are an asset of the State of Western Australia and should be developed for the benefit of all Western Australians.
2. Future development in the Rangelands must be economically, socially and ecologically sustainable.
3. The Minister is responsible for the administration of Crown land, including land held under all types of leases in the Rangelands.
4. The Minister will be advised on matters pertaining to the Rangelands by experts who are independent from Government.
5. The value of the rangelands will be maximised through enabling greater diversity in land uses and more secure tenure.
6. Land uses covered by broadscale leases in the Rangelands must be consistent with the ongoing management and preservation of the rangelands resource.

2.2 Current Regulations and Policies

Current legislation and policies restrict the use of pastoral leases to "pastoral purposes", thereby limiting the range and scale of possible activities undertaken on the rangelands. The LAA needs to change to allow greater options. The Department of Lands is responsible for undertaking this task, with input from other agencies with interests in the management of the rangelands, such as the Departments of Agriculture and Food; Parks and Wildlife; Water; and Planning.

The lack of flexibility inherent in the LAA's pastoral lease provisions is best illustrated with respect to land degradation on a pastoral lease. In such a case, a lessee may destock without the authorisation of the PLB for a period of up to 5 years. Longer periods are possible in consultation with the PLB, although the land must continue to be managed as a pastoral lease. No option exists to change to an alternative broad scale tenure that would provide for different approaches to enterprise development

complementary to land rehabilitation. Indeed, in situations where land degradation has reached the point that a lease is neither economically nor ecologically viable, the PLB can either continue to monitor or advise the Minister to forfeit the lease. There are no alternatives and, as a result, some pastoralists have expressed their frustration at the inflexible nature of the LAA and the pastoral lease tenure.

The LAA allows for the Minister, on the recommendation of the PLB, to waive, reduce or defer the payment of rent for limited periods during periods of economic hardship or disaster. This helps lessen the impact of significant adverse events on the pastoral industry in the short term. However, without the flexibility to diversify activities on the rangelands on a broad scale, the current frustrations pastoralists experience with the LAA's diversification permit system will continue to grow. Such frustrations may lead to increasing levels of non-compliance, increasing the cost of administering the rangelands.

2.3 LAA Review

The Department of Lands is currently developing amendments to the LAA as a result of a review of the Act undertaken in 2004. The LAA Amendment project is taking place separately to the Rangelands Reform Program. The Rangelands Reform Program developed as part of a decision to bring forward reforms addressing the key issues of the 2009 pastoral industry reviews. However, amendments to Part 7 of the LAA that were identified as part of the 2004 review are being included in the Rangelands Reform program. Doing so will ensure the many long-standing anomalies and inefficiencies that affect the rangelands will be resolved in a single, unified Bill.



Part 3 - Options to Address the Issue

3.1 Options for addressing the issue

In this section, each of the options for addressing the issue outlined in the previous sections is examined in turn. The key features of each option are described, and the costs and benefits of those options are discussed and placed in context, with regard to the arrangements in other jurisdictions and other WA Government legislation and initiatives.

In total, three options are being considered. The third option contains eight subsidiary elements:

1. **Status Quo:** no action taken.
2. **Non-Regulatory Option:** amendments to administrative processes only, to enhance streamlining and reduce red tape, and possible education programmes.
3. **Regulatory Options:** introduction to the LAA of new lease options and other arrangements:
 - a. Rangelands lease;
 - b. Statutory right of renewal for compliant leases;
 - c. Increase the term of the lease for up to 50 years;
 - d. Statutory transfer of permits Issued under Division 5 Part 7 to an incoming lessee;
 - e. Requirements to provide a management plan for a pastoral lease;
 - f. Powers to investigate compliance with lease;
 - g. Land condition monitoring (LCM); and
 - h. Future Governance of the rangelands.

3.2 Analysis of the Options

3.2.1 The status quo and the implications of maintaining it

The status quo is considered to be the base case in the analysis of options. In this scenario, no action is taken: no legislative amendments; no encouragement of additional diversification or investment in the Rangelands. Pastoral lease terms will remain unchanged, along with the current pastoral diversification permits system. The take up of diversification permits will remain low, punctuated by lack of opportunity and the high cost of developing infrastructure associated with complementary enterprises.

Retaining the status quo will ensure that pastoral land tenure will continue to be the predominant form of land tenure covering most of the leased area of the rangelands and the predominance of cattle grazing will continue while sheep grazing will continue to decline. As indicated in Section 1, many economic development opportunities would remain unexplored if this option were pursued. The principal costs to pastoralists and the State in maintaining the status quo is in lost opportunity and the degradation of a major State asset.

The current arrangements no longer benefit the majority of pastoral lessees or the State, and still partly reflect previous Government policy where full stocking rates and pastoral infrastructure development were mandated in legislation to discourage squatting and speculation (McKeon, G.M. et al, 2004). Further, the governance arrangements do not reflect modern practices and expectations for Government boards and committees, as outlined below.

Some pastoralists have asserted that the legislation in its current form is protective of their industry, helping to reduce loss of industry capacity and, in turn, reducing costs. However, the current legislation does not provide assurance for pastoral lessees while their industry continues to suffer from various short and long term adverse impacts. In the long term, with legislative change, there would be the flexibility for lessees to transition more easily between mixes of enterprises that can adequately adjust to market signals.

Maintaining the status quo means the opportunity to diversify economically is significantly limited, as pastoral leases are contiguous over a vast area of the State's arid and subtropical rangelands. The LAA in its present form cannot accommodate changes that will achieve better land use, and improved development and environmental outcomes on the rangelands. Any change to current arrangements will require legislative amendments.

Several reviews have concluded that the pastoral industry is challenged by commodity trade risk, increasing land degradation and biophysical threats such as wild dogs and increasing climatic instability. The impact of such issues is likely to be dependent on a range of factors, however, increasingly, an array of stakeholders, including pastoralists, are calling for more flexible tenure arrangements that will foster alternative enterprises and industries.

One of the key findings of the SRPAG's 2009 Review was that "maintaining restrictive approaches to land use is no longer appropriate in the Southern Rangelands and that development of diversified enterprises and land use is considered to be the most realistic means of sustaining pastoralists and remote communities into the future". This is reflected in recommendation two of that Review: "Facilitate opportunities for innovation and diversification within the rangelands through improved legislation and administration." The SRPAG Review also

acknowledged that most of its findings were not only relevant to the Southern Rangelands but could apply across all of the State's pastoral leases.

These problems, identified in the 2009 Review, have led to pastoralists seeking other sources of income. Increasingly, this has been mining contract work, particularly in the Pilbara and Goldfields-Esperance regions.

Demand for alternative activities to pastoralism is increasing; activities such as carbon abatement, more intensive food and fodder production, and ecological and cultural tourism, among others. Some of these activities are a higher value land use than pastoralism, while still requiring broad areas of land for which no other form of tenure currently exists. Tourism, fodder production and horticulture presently require a permit under Part 7 Division 5 of the LAA, and must be directly linked, or supplementary to, pastoral purposes. If an alternative tenure arrangement existed, such as the proposed rangelands lease, it would enable new ventures in diverse industries to develop, leading to higher investment and employment in the Rangelands.

Where a proposal for intense investment in infrastructure for tourism, or another intensive activity, such as irrigated agriculture, is received that is incompatible with either a rangelands or pastoral lease, a more appropriate form of tenure might be a section 79 lease or other form of tenure. Such forms of tenure provide exclusive possession, whereas both the rangelands and pastoral leases do not. Exclusive possession tenure is more appropriate for intensive infrastructure and investment on a particular, generally smaller, parcel of land than a pastoral or rangelands lease, due to the greater security of tenure involved and, as a result, the greater certainty investors will have that the venture is viable. The relevant land would be excised from the lease and the new, more secure tenure issued over the land. Under the proposed amendments to the LAA, the excised land could be linked to the lease, providing the lessee with security that the lease will not be adversely impacted in the future.

Conservation interests view the Rangelands, particularly regions such as the Kimberley, as some of the world's last relatively undeveloped wilderness areas and in need of protection. As a result, some of these groups have acquired pastoral leases and are awaiting the opportunity to de-stock the land and run these leases for conservation alone. However, section 108(1) of the LAA requires that a pastoral lessee manage the land to its best advantage as a pastoral property. In practice, conservation groups usually meet this requirement by running a limited number of livestock on the pastoral lease. Under a rangelands lease, the use could include, or solely be, conservation purposes. For example, conservation groups may seek to fund their activities via tourism, or another compatible land use. A rangelands lease will allow more than one purpose on the lease.

The current provisions also limit Aboriginal interests in the promotion of the Rangelands for cultural tourism opportunities, and to undertake land management activities connected to cultural practices.

As indicated in Figure 4 (page 17), some pastoral lessees have diversified their pastoral businesses using permits, while others are using tenure options, such as section 79 leases, for more intensive developments. Diversification permits are most successful where pastoral lessees have access to resources and features that provide a basis for additional activities, such as an adequate ground water resource and suitable land for cropping or outstanding natural features and access to major transport routes for tourism. However, while not all leases have these advantages, more lessees would be likely to choose to diversify their pastoral businesses if the restrictive regulatory environment and limited land tenure options were reformed. The reforms should focus on non-pastoral opportunities to extend the range of activities available to be undertaken on the rangelands.

The problem with the current restrictive LAA is more significant in terms of land area than its impact on a significant proportion of the State's population, due to the low population density in the Rangelands. Pastoral lessees, while only around 452 in number, require large areas for sustainable livestock production, with the average lease size being around 185 000 hectares. However, that small population has a significant impact, as pastoralists are managers of significant areas of public lands. They have an important role in the maintenance of a human presence in the Rangelands, which inevitably provides public and environmental benefits through the essential services afforded by their remote location. Such services include assistance to motorists in distress, assistance to the mining industry, a means of surveillance and provision of security, as well as control of vermin and other pests on their leases.

With respect to governance, retaining the status quo would see the Pastoral Lands Board (PLB) remain the Government board established to administer pastoral leases and advise the Minister on policy relating to the pastoral industry. Under the proposed amendments to the LAA, the Minister will assume responsibility for all tenure and rangeland condition management related decisions in the Rangelands. All powers currently held by the PLB will be transferred to the Minister and the PLB dissolved. Such a proposal will deliver a range of efficiencies in the administration of Crown land in the Rangelands, including the pastoral estate.

In the context of the development of the broader rangelands estate, the PLB's ability to provide advice to the Minister on rangelands issues outside of the pastoral lands is limited. It is proposed that the Minister will seek strategic advice from a new independent skills-based Pastoral and Rangelands Advisory Board (PARAB) to be established in statute.

At present, the powers of the PLB are inconsistent with accepted practices regarding the powers of Government boards and committees. The PLB currently holds some decision-making powers that the Minister does not have, while some of the powers currently vested in the Minister may only be exercised in consultation with the PLB.

The transfer of the PLB's powers to the Minister will mean that the Minister will assume the following responsibilities for pastoral leases:

- a. setting guidelines for monitoring and assessing the condition of pastoral land;
- b. determining the rent for permit areas;
- c. issuing default notices;
- d. issuing directions to lessees regarding land degradation;
- e. analysis of annual returns;
- f. approving permit activities and issuing permits; and
- g. ascertaining compliance with land management laws.

This will bring the provisions for decision making on tenure and the administration of leases in the Rangelands into line with the rest of the LAA.

An additional concern with respect to governance of the Rangelands is that, at present, there are two administrative bodies for pastoral leases, namely, the PLB and the Department of Lands. This has caused confusion and inefficiencies, not least because DoL officers are required to provide secretariat support to the PLB, while also answering to the hierarchy of DoL and the Minister. Further, given a majority of members of the PLB are pastoralists, there is the potential for real or perceived conflicts of interest in relation to decisions made by the PLB in respect of individual leases. By contrast, removing the PLB and transferring all powers to the single authority of the Minister for Lands will result in a much smoother, more transparent and efficient administration of pastoral leases.

Additionally, the establishment of a purely advisory board will enable the Minister, as required, to draw on the knowledge, skills, and experience of a wide range of industries. The PARAB would be based the approach taken when the Biosecurity Council was established under Part 2, Division 6 of the *Biosecurity and Agriculture Management Act 2007*. The BAM Act specifies that the members must have a general or specific interest and expertise in the management of biosecurity in the State, and include members of community and producer organisations. In the case of the PARAB, expertise would be drawn from areas including pastoralism, regional development, business and industry development, mining resource management, Aboriginal interests, sustainability, tourism, natural resource management, and environmental management and conservation.

If the status quo is maintained, the inherent problems described above will be further compounded; the Rangelands economy faces increased costs from lost opportunity, further ecological degradation, inability to remain competitive in traditional industries,

lack of innovation, and inefficient governance structures. Ultimately, this will be detrimental, not only to Rangelands communities, but to the State as a whole, through the direct links that the Rangelands socio-economic yield has to other areas of the State.

A quantitative analysis of the status quo has not been undertaken. It has been assumed to have zero positive benefit, with quantification of the negative outcomes difficult to estimate.

Discussion Point

Do you consider that the forms of tenure currently available in the *Land Administration Act 1997* are adequate for current and future businesses in the Rangelands? If so, why? If not, why not?

Discussion Point

Should the current legislative framework be retained? If so, why? If not, why not?

3.2.2 Non-regulatory Options

There are limited non-regulatory options that could be employed to attempt to address the problems identified. Two relevant actions were initiated in 2013 under the Rangelands Reform Program. The first of these actions involved streamlining the diversification permit process to remove red tape, thus facilitating the granting of permits. A Diversification Working Group (DWG) of the Rangelands Reform Program was established to:

- Examine and explore specifically the elements of legislative and administrative change needed to meet the outcomes of the Review of the Process to Permit Diversification on Pastoral Leasehold Land in Western Australia;
- Identify policy settings and strategies conducive to diversification in the Rangelands;
- Develop the concept of a diversification 'one stop shop'; and
- Streamline the permit approval process.

The DWG comprised the following agencies, which are directly involved in the process to approve diversification permits:

- DoL;
- DAFWA;
- Department of Environmental Regulation;
- Department of Water; and

- Tourism Western Australia.

These agencies worked together to identify aspects of the process that could be improved. Several proposals were forwarded to the Pastoral Lands Board for discussion and implementation. Those proposals were:

- A reduction of the timeframe for response to diversification permit requests by relevant agencies (from 42 days to 28);
- Proposed establishment of a position of "diversification officer" to promote diversification and assist pastoralists to develop, submit, and implement diversification permits once they are approved; and
- Development of a single "approved form" for referrals to agencies in order to streamline applications.

Of those, only the proposal to shorten the timeframes for referrals regarding permits has been progressed. The others were either deemed uneconomical (the "diversification officer") or contrary to the requirements of the other agencies' respective legislation governing approvals (single approved form).

The second action involves extension activities to promote diversification into enterprises such as agriculture and tourism. At present, trials are being undertaken in the west Kimberley region for the Water for Food program, which is designed to identify and facilitate the development of intensive agricultural zones where high quality water sources exist. Additionally, the Caravan and Camping Action Plan, which arose from the Kimberley Science and Conservation Strategy, has been identifying ways to encourage development of tourist routes for the caravan and camping sectors of the tourism market. A key plank in this strategy is the "Camping with Custodians" program, which seeks to provide opportunities for Aboriginal people to share their land and customs with others, creating business opportunities for the former, and unique Australian cultural and nature experiences for the latter.

While this action is also being undertaken as part of the Rangelands Reform Program and other Government programs, the focus of Rangelands Reform is mainly on tenure reform.

Other non-regulatory options include amending Pastoral Lands Board policy to allow a more liberal interpretation of the provisions of the LAA applicable to pastoral leases. For example, flexibility in interpretation of the definition of pastoral purposes and diversification is already being progressed as a practical means of addressing some development issues. However, this will be limited to issues at the margins and is restricted when the literal interpretation of the definition as legislated in section 93 of the LAA is applied. Despite their limitations, a quantitative analysis of the non-regulatory options has been undertaken (see Attachment 4).

Discussion Point

Are there other possible non-legislative changes that would assist pastoral businesses? If yes, please provide as much detail as possible.

3.2.3 Proposed Regulatory Options

The major regulatory change, the proposed rangelands lease, will provide a long-lasting incentive to diversify and invest in the Rangelands. For the first time there will be tenure arrangements that allow non-pastoral activities over broad scale areas of the Rangelands. Attachment 3 demonstrates how pastoral lessees can move from a pastoral lease to the proposed rangelands lease and the process for a new entrant into the Rangelands who may wish to acquire a rangelands lease.

Further, the legislated change to establish a statutory right of renewal for compliant leases will provide security of lease tenure for pastoral lessees able to maintain sustainable livestock enterprises in the long term. Provided lessees are compliant with their lease conditions and the relevant terms of the LAA, lessees will have their leases renewed as a statutory right. This process will reduce the administrative burden on both the lessee and the Department of Lands when comparing it to the protracted and complex 2015 renewals process, which began in 1997 (Pastoral Lease Inquiry Report, 2014: 5). The new renewals process will provide lessees with the security that, as long as they meet their obligations under the lease and the LAA, their leases will be renewed. The risk that the lease could be discontinued at the discretion of the Minister will no longer be an obstacle to investment.

In addition, pastoral lessees will be able to apply for a longer term lease of up to 50 years, where their lease is of a shorter term.

Some of these regulatory options, i.e. the grant of a rangelands lease and the grant of an extended term for a pastoral lease are future acts under the Native Title Act 1998 (NTA). Action 3.4 from the SRPAG Review noted that Government should “recognise that native title is a major impediment to desired changes and use all resources at its disposal to expedite resolution of any negotiations”. Currently the Department of Lands is establishing guidelines and template ILUAs to assist proponents of projects under the Water For Food program. These aids will be equally applicable to negotiations between proponents for a rangelands lease or an extended term pastoral lease and native title parties. The settling of native title should add an extra level of security for both tenure and confidence for the activities proposed for the lease.

It is important to consider that the new tenure options are not compulsory and pastoralists can retain their current leases and continue business as usual.

3.3 The Proposed Legislative Amendments

A quantitative analysis of the proposed legislative options appears in Attachment 5.

3.3.1 Rangelands lease

This is a new form of tenure, which will allow for multiple and varied uses of the rangelands, provided that use is broad scale and consistent with the preservation and ongoing management of the rangelands as a resource.

The creation of the rangelands lease requires amendments to the LAA and will fundamentally change the Rangelands. The rangelands lease will meet an increasing demand for more diverse activities in the Rangelands by pastoralists and by new entrants, creating new economic and social opportunities.

Currently, pastoralists seeking to diversify their activities are only able to do so to a limited extent. Through a permit issued under Part 7 Division 5 of the LAA, a pastoralist may sow non-indigenous pasture, carry out agricultural activities, operate tourism (of a type supplementary to the pastoral use, e.g. station stay) or undertake a non-pastoral use over enclosed or improved land.

Mining companies, private conservation groups and others have acquired pastoral leases with the primary purpose of undertaking non-pastoral activities. However, because the definition of a pastoral lease under the LAA is the “commercial grazing of authorised stock”, these lessees are required to continue with pastoral activities despite this not being part of their business model. This may be in direct conflict with their desired use of the land and creates a cost burden to their business. It can also place unnecessary grazing pressure on the rangelands resource and in some instances contribute to ongoing degradation of the biodiversity.

The proposed rangelands lease is a new form of tenure that will allow for multiple and varied uses of the rangelands, provided the use is broad scale and consistent with the preservation and ongoing management of the rangelands as a resource. The permitted uses will be specified in the lease itself and the use will determine the rent payable and conditions, which will be set out in the lease.

Some examples of possible permitted uses may include:

- multiple uses – e.g. grazing livestock, horticulture, agriculture, tourism
- Aboriginal economic development and land management
- mining companies for environmental offsets, rehabilitation obligations or where their activities are substantially inconsistent with pastoral uses
- conservation purposes
- rangelands use in conjunction with off-lease activities
- taking advantage of future opportunities that do not currently exist.

The grant of a rangelands lease will be the responsibility of the Minister for Lands and will be subject to overriding Crown land tenure allocation policy which requires appropriate tenure for the proposed use. There will be minimum conditions applicable to all rangelands leases set out in the legislation in relation to fire prevention and management, land management and biosecurity measures, similar to the existing provisions for pastoral leases.

The grant of a rangelands lease will not adversely impact on the ability to access the land under lease for exploration and mining. The rangelands lease is designed to be treated in the same way as pastoral leases under the *Mining Act 1978*, but will take into account that a rangelands lessee may have significant structures on the land.

Rangelands leases will not have a uniform term that applies across all types of activities. The term will be set by the Minister and may vary depending on the approved uses agreed to in the lease. It may be longer for some purposes, such as conservation and Aboriginal purposes and shorter for others. The right to renew a lease may be specified in the lease. A rangelands lease will be able to be sub-let, but only for the purpose(s) established under the head lease.

Should a pastoral lessee wish to establish a rangelands lease over the land they hold under lease they will be required to complete the native title future act process under the *Native Title Act 1993 (Cth)* (NTA), apply to the Minister for Lands for a rangelands lease and relinquish the pastoral lease prior to the grant of a rangelands lease. The future act process will most likely be settled through the negotiation of an Indigenous Land Use Agreement (ILUA) between the pastoral lessee and the native title holders or claimants. A third party will not be able to apply for a rangelands lease over an existing pastoral lease without the agreement of the pastoral lessee. The same requirements to resolve native title would exist for a new proponent seeking to establish a rangelands lease over unallocated Crown land (UCL).

As with pastoral leases, the rangelands lease will include rangelands condition management and monitoring requirements. Rangeland condition will be monitored using the same method as that used on pastoral leases, with the analysis of reporting and any associated compliance requirements resting with the Minister.

Discussion Point:

Would you consider applying for a rangelands lease? If so, for what purpose or purposes? If not, why not?

3.3.2 Statutory Right of Renewal for Compliant Pastoral Leases

Amendments are required to establish the statutory right of renewal of a pastoral lease to provide greater security of tenure. The amendments provide that the

Minister will renew a pastoral lease for the same term if there is no outstanding breach of the conditions of the lease, the LAA or rangeland condition monitoring requirements. If the lessee is compliant and therefore has a statutory right of renewal, the State cannot excise land from the lease at any time without paying compensation to the lessee, in accordance with Parts 9 and 10 of the LAA. This amendment is not an option but a benefit to all pastoral lessees.

In order to be eligible to renew a pastoral lease, the lessee must apply in writing to the Minister requesting renewal of a pastoral lease during the period of 12 months prior to 10 years before the expiry of the lease. In the case of wholly compliant lessees, the Minister must make an offer for the renewal of a pastoral lease at least eight years before the date the lease is due to expire.

Even if the Minister makes a decision that the lease is to be renewed eight years out, the lessee must remain compliant up to the date of renewal, in the following respects:

- all outstanding rent and rates under the *Biosecurity and Agriculture Management Act 2007* have been paid; and
- all annual returns have been lodged; and
- all reports on rangeland condition have been lodged.

Should the Minister consider making an adverse decision related to renewal of a pastoral lease for reasons of unsatisfactory rangeland condition management, the Minister must seek independent technical advice selected from a panel of experts established for this purpose. Further discussion of the panel is included in section 3.3.8 below.

These provisions balance the need to provide better security of tenure and certainty for pastoral lessees. Further, where the Minister has determined that the lease is not compliant with the conditions of the lease, or a provision of the LAA, including in relation to rangeland condition management, and the Minister decides:

- not to offer a renewal of the pastoral lease on the same terms and conditions;
- to offer a renewal on different terms and conditions; or
- to offer it on the same terms and conditions, but over a part only of the pastoral lease,

the pastoral lessee has a right to appeal that decision to the State Administrative Tribunal (SAT).

The appeal to the SAT is intended to ensure that decisions made in relation to renewal of pastoral leases are reasonable and fair. The appeal must be made within six months of the Minister making a decision not to renew, or to renew with conditions. This will enable the lessee ample time to consider and prepare an appeal to the SAT. Generally, the SAT only allows 28 days for lodgement of an appeal of a

Minister's decision however longer timeframe recognises the time it may take to develop an appeal on issues such as rangeland condition.

Discussion Point:

Are you supportive of the proposed statutory right of renewal for compliant pastoral leases? If so, please explain why. If not, please provide reasons.

Discussion Point:

Do you think that the amendment that enables pastoral lessees to have a right to appeal to the SAT if the Minister for Lands makes an adverse decision regarding the renewal of their lease is fair and reasonable? If so, do you agree that the SAT is the most appropriate venue for such an appeal? If not, why not?

3.3.3 Increase the Term of a Pastoral Lease

This legislative change would enable the extension of the term for an existing pastoral lease up to 50 years. At present, pastoral leases can only be renewed for the same term; some pastoral lessees are operating on leases with terms as short as 18 years, while others run for the maximum of 50 years. This has occurred as a result of a range of circumstances such as amalgamations of, and boundary changes to, leases under the repealed *Land Act 1933*, which stipulated that all pastoral leases would expire on 30 June 2015. Being able to extend a lease to 50 years will allow more security of tenure and facilitate investment in pastoral businesses.

Should a pastoral lessee wish to extend the term of their existing lease, they will be required to complete the native title future act process under the NTA, apply to the Minister for Lands for a new pastoral lease with a longer term, and relinquish their current pastoral lease prior to the grant of a new pastoral lease. The future act process will most likely be settled through the negotiation of an ILUA between the pastoral lessee and the native title holders or claimants.

Discussion Point:

Is it of value to pastoral lessees to have the option to increase the term of their lease to a maximum 50 year term? If so, why? If not, why not?

3.3.4 Statutory Transfer of Permits Issued under Division 5 Part 7 to an Incoming Lessee

The LAA does not currently allow for a permit to be transferred to a new lessee when a pastoral lease is sold. Consequently if a new lessee wishes to continue carrying out an activity for which an existing permit has been issued, they are required to apply for a new permit. It would be more administratively efficient if the right to carry out an activity under an existing permit could be transferred from an existing lessee to an incoming lessee. This would also provide the incoming lessee with the assurance that approval to carry out activities that may be essential to the financial viability of the pastoral business is in place, thereby providing an additional incentive to invest in the Rangelands.

This amendment is an administrative measure, which will make the process of transferring leases with existing permits more efficient. While it may prove to increase the value of the sale of a lease to a degree, due to the certainty that the permit activity will transfer across, rather than the incoming lessee being required to apply for a new permit, it is not expected to prove a determining factor in the value of the lease. Additionally, it will not add costs to government. Indeed, it may reduce costs to Government in the longer term, although not to any significant extent. As a result, this amendment has not been factored into the cost-benefit analysis at section 4 below.

Discussion Point:

Is there any advantage in being able to transfer permits with the lease to an incoming lessee? If so, why? If not, why not?

3.3.5 Requirements to Provide a Management Plan for a Pastoral Lease

The present section 107 of the LAA provides for the PLB to require the lessee to submit a development plan if the "land under the lease for pastoral purposes requires improvements to be made". However, development plans only cover a limited aspect of pastoral lease management and need only to be complied with to the "satisfaction of the Board". There currently are no measurable outcomes.

Under the proposed amendments to section 107, however, a management plan would require a lessee to produce a document as prescribed in the regulations and in keeping with the lessee's obligations under section 108 LAA. This is a much broader and more comprehensive approach to managing the land. A management plan may address specific issues, including, but not limited to:

- lease development;
- stock management;
- control of pests, including feral animals, weeds, and declared organisms;

- soil erosion;
- rangeland rehabilitation; and
- infrastructure management.

The management plan would be submitted to the Minister for Lands for approval. Where the pastoral lessee fails to implement and/or comply with the agreed management plan, the amendments to section 107 will provide for infringement notices accompanied by fines, which are designed to incentivise compliance. The Department of Lands' experience with development plans is that in cases where a pastoralist has delayed submitting a plan until such a time as they are threatened with prosecution, it is a heavy-handed and expensive tool for compliance and should be used only as a last resort.

Together with amendments to section 107, DoL proposes to amend section 108 LAA, replacing the unmeasurable standards, "to the satisfaction of the Board", and "to its best advantage as a pastoral property" from the section, with measurable standards. Some of the new, measurable standards to be included in section 108 are:

- avoid causing or contributing to land salinity that –
 - reduces the land's productivity; or
 - damages any other land;
- conserve soil, water resources and biodiversity;
- protect riparian vegetation;
- maintain the indigenous pasture and vegetation; and
- manage any pests, including feral animals, weeds and declared organisms.

In part, these standards will be measured by analysis of data collected as part of the rangelands condition monitoring system, which is outlined at 3.3.7 below.

Discussion Point:

Is the current requirement for a development plan an adequate tool to support the ecologically sustainable management of a pastoral lease? If so, why? If not, why not?

Discussion Point:

If a development plan is not adequate, what issues should be covered by the proposed management plan? Are there any other issues that should be considered for inclusion? Please provide as much detail as you can.

3.3.6 Powers to Investigate Compliance with Lease

The proposed amendments to section 139 LAA will ensure that pastoral lessees recognise that they must comply with the terms of their lease as well as the provisions of the LAA. Additionally, the new provision will grant the Minister with the power to

compel a lessee to provide information to the Minister to support compliance with their obligations under the LAA.

At present, section 139 does not have a requirement for a pastoral lessee to provide evidence, written or otherwise, of their compliance with statutory obligations. As a result, obtaining proof of a breach of the Act is extremely difficult. The Minister requires a legislative head of power to compel a lessee suspected of a breach to provide evidence and/or information with respect to that matter. Should the lessee fail to provide the required information by the date determined as reasonable by the Minister, an infringement notice and penalty will be issued to the lessee.

3.3.7 Land Condition Monitoring

A key element of the Rangelands Reform program is to improve the management and preservation of the rangelands as an asset of the State for current and future generations. In order to achieve this goal, the regular collection and reporting of data on the condition of the rangelands should be carried out by those best placed to do so: the land managers. However, at present, there are no provisions in the LAA requiring land condition data to be collected and reported; nor does the Minister for Lands have specific powers to require actions to be taken in relation to land condition, such as to ensure degraded areas are rehabilitated.

Amendments to the LAA are required to provide the Minister for Lands with powers to compel pastoral and rangelands lessees to install monitoring sites, conduct monitoring, collect and report on data, and to require the rehabilitation of degraded rangelands. These provisions will be applied to pastoral leases and rangelands leases, as both types of leases are granted over large areas and rely on the natural resource of the rangelands for the permitted uses. The proposed amendments will provide for a system of reporting on the condition of the rangelands that requires lessees to monitor and report to the Minister for Lands. Pastoral and rangelands lessees will be required to submit their land condition monitoring data with the Annual Return, or at other times as prescribed or directed by the Minister.

The Department of Lands is moving towards a new model of land condition monitoring in the rangelands that combines satellite imagery with on-ground photographs and data. Land condition monitoring will be compulsory for lessees of pastoral and rangelands leases. However, it is the aim of the Department of Lands that land condition monitoring will eventually cover all tenure types in the rangelands, including the conservation estate, Aboriginal reserves and unallocated Crown land.

The Department of Lands will analyse satellite data on trends in vegetation cover via an automated system that will generate a series of graphs and maps at lease level. This will be complemented by on-ground monitoring by land managers at a range of designated sites at lease/tenure level. Pastoral lessees will be required to provide the Department with a report of their monitoring activities and data in a

prescribed format and will submit this data with their annual return under section 113 of the LAA.

Rangelands lessees will also be required to monitor the condition of the land under the lease and submit this information in a similar fashion to pastoral lessees.

DoL is currently preparing a business case seeking Royalties for Regions funding of \$3.64 million to establish an operational monitoring system, with a focus on the establishment of appropriate information technology resources and staff capacity to monitor and interpret data received, and training land managers to appropriately perform on-ground monitoring of land. Remote satellite imagery will be the foundation of the proposed new rangeland condition monitoring regime, as a result of the United States Geological Survey recently making Landsat data freely available.

The changes being progressed as part of the *Land Administration Amendment Bill 2016* will ensure land managers undertake LCM to set a minimum standard, in order to protect the integrity of the Rangelands asset. The data produced via LCM becomes a tool for land managers to utilise to ensure their businesses are operating at optimal level. This is especially pertinent on the rangelands, given land managers rely on the land to support their livelihoods.

If the lessee fails to meet the standard of care, there are a number of compliance and regulatory mechanisms available to address the issue. These mechanisms will be effected through the Minister for Lands' power to require a lessee to develop and implement a management plan; to issue directives (including reducing stock numbers); and to issue a default notice, prosecute and/or forfeit the lease.

3.3.8 Future Governance of the Rangelands

There will be a number of provisions common to both pastoral and rangelands leases in the amended *Land Administration Act 1997 (LAA)* and therefore a need for a single authority responsible for all types of leases in the Rangelands. This proposal is an administrative amendment that will ensure that there is equitable, consistent and transparent decision making for all leases in the Rangelands. Therefore, this proposal is not considered in any of the modelling or cost-benefit analysis that is included below at Section 4.

Almost all land in the Rangelands, including the pastoral estate, is Crown land making it a public asset of enormous size and value to the people of Western Australia. Decisions on public assets should be made by a democratically elected representative of the people who is then accountable for those decisions to the Parliament and, ultimately, the people of Western Australia. The appropriate authority for decisions over, and the administration of, Crown land is the Minister for Lands.

At present, in the case of pastoral leases, this is not the case as the Pastoral Lands Board (PLB) holds some decision making powers that the Minister does not have. While the Minister for Lands has the power to direct the PLB, it is not administratively efficient to have to rely on this mechanism to ensure that the policies of the elected government are implemented. It is also inconsistent with accepted practices regarding the powers of Government boards and committees.

An additional concern with respect to governance is that currently there are three administrative bodies for pastoral leases, namely, the PLB, the Department of Lands and the Department of Agriculture and Food Western Australia (DAFWA), through the Soil and Land Commissioner. This has caused confusion and inefficiencies, not least because Departmental officers are required to provide secretariat support to the PLB, while at the same time complying with their responsibilities as Department of Land's employees and providing advice and support to the Minister.

The proposal is to dissolve the Pastoral Lands Board and transfer the responsibility for all tenure and land condition management related decisions in the Rangelands to the Minister for Lands. This will bring the provisions for decision making on tenure and the administration of leases in the Rangelands into line with the rest of the LAA and result in more efficient and effective Crown land administration.

As a result of the transfer of these powers, there is a perception from the pastoral industry that the Minister may no longer have access to the technical knowledge of the rangelands that he requires to make informed decisions regarding rangeland condition management issues on both pastoral and rangelands leases. As a result, the pastoral industry is concerned about a future Minister of the day making ill-informed or unfair decisions.

Therefore, the amendments provide that the Minister must seek expert technical advice prior to making adverse decisions with respect to rangeland condition management. The Minister must establish a panel of consultants, in consultation with representatives of the pastoral and rangeland industry, from which he may choose to consult one or more panel members in each case. The Minister will be required to consider this advice when making his or her decision, but the advice is not binding upon the Minister.

The adverse decisions to which this provision is to apply are:

- (i) Issue of a directive of maximum number of stock, distribution of stock or to remove a specified number of stock
- (ii) Issue of a default notice (pastoral and rangelands leases);
- (iii) Issue of a notice of intention to forfeit (pastoral and rangelands leases);
- (iv) Decision that a pastoral lessee is not entitled to the statutory right of renewal due to non-compliance (per amendments to section 140 LAA).

This provision ensures that the Minister will be in receipt of independent expert technical advice to enable him or her to make an informed decision.

The pastoral estate covers just over a third of the Rangelands. The remainder consists of other types of leases, reserves and unallocated Crown land. The Rangelands have significant cultural and heritage value for both Aboriginal and non-Aboriginal people. For the last several years the Rangelands have contributed billions of dollars to the State economy through mining. Increasingly, the Rangelands is being revealed as a zone of agricultural economic growth as the Water for Food initiative discovers new water sources to enable the development of new irrigation areas and increase the size and water efficiency of existing irrigation districts. This will contribute to the State goal of doubling the value of agricultural exports by 2025.

The Rangelands are also ecologically important because of the significant number of endemic species, high species diversity, areas of ecological and geomorphological integrity, unique ecosystems and habitat for rare, threatened and endangered species. Five of Australia's 15 national biodiversity hotspots are located in Western Australia's Rangelands.

A more integrated and coordinated approach to the management and use of the Rangelands is required in order to realise its social and economic potential in an ecologically sustainable manner. In this context, the PLB's capacity to provide advice to the Minister for Lands on broader economic, social and environmental development issues related to the Rangelands is limited given that its mandate and expertise is exclusively in pastoral activities on land held under pastoral lease.

For this reason, it is proposed to establish a Pastoral and Rangelands Advisory Board (PARAB) to provide the Minister for Lands with access to independent advice on how to unlock the potential of the Rangelands. The PARAB will be made up of ten members, of which two are to have pastoral experience or expertise. The remaining members will be appointed for their expertise in the areas of regional development, business and industry development, mining resource management, Aboriginal interests, sustainability, tourism, and natural resource management, conservation or sustainability.

Discussion Point:

Is the proposal to bring the administration of pastoral leases, the proposed rangelands lease, and other leases that may be issued in the Rangelands under the single decision making authority of the Minister for Lands appropriate? If so, why? If not, why not

Discussion Point:

Is the obligation for the Minister to consult and consider the advice of an independent expert prior to making an adverse decision on rangelands condition management a fair process? If not, why not?

Discussion Point:

Do you consider the proposed PARAB to be an appropriate body to provide strategic advice to the Minister for Lands on matters related to the sustainable development of the Rangelands? If so, why? If not, why not and from whom should the Minister for Lands receive such strategic advice?

Discussion Point:

Do you think the proposed Pastoral and Rangelands Advisory Board targets the appropriate mix of experience and expertise on issues and industries to provide the Minister for Lands with strategic advice on the Rangelands? If so, why? If not, which areas of expertise do you think are lacking, or which areas of expertise listed do you think are not required?

3.4 Other Regulatory Options (investigated - not proposed to be adopted)

Other regulatory options include some of the suggestions from the stakeholder feedback to the Rangelands Tenure Options Discussion Paper, where a number of alternative approaches to the land tenure reforms proposed were identified. These options will not be adopted under the Rangelands Reform Program.

One suggestion received proposed amending the definition of "pastoral purposes" in the LAA to reflect the definition in the NTA, which would allow broader land uses without the need for a permit, similar to the Queensland model (see below in 3.7). Another approach was to abolish permits altogether in favour of a relaxed approval system. These were investigated, with legal advice being sought in relation to changing the definition of pastoral purposes. This advice demonstrated that amending the definition of pastoral purposes would in itself be a future act, requiring the implementation of a state-wide ILUA in order to achieve it. State wide ILUAs are not a preferred approach as it would involve an agreement with all native title parties that have rights and interests in the pastoral estate. This could only be achieved at considerable cost and would probably take a decade or more to achieve.

As a guide, the Government's South West Settlement with the Noongar people in the South Western Land Division of WA has taken six years to be accepted, but under the terms of the agreement, will be phased in across the next 12 years. The Noongar agreement was brokered with six claimant groups, whereas a state-wide agreement would be with dozens of claimant groups or native title holders, adding infinite complexity to the process. For this reason, the Rangelands Reform Program has not included any legislative amendments which would of themselves affect native title rights and interests across the board and therefore require a state-wide ILUA under the NTA.

In a similar vein, another suggestion was to abolish the diversification permit system altogether. This was not considered to be in the public interest. Permits are considered a transparent and responsible method of providing an adequate level of control and monitoring, with respect to managing Crown land. An alternative approach incorporating improvements to and streamlining of the application and assessment process is the preferred option. In conclusion, none of these other potential regulatory options were considered feasible.

Amendments to the LAA to provide greater security of tenure for pastoral lessees in Western Australia do not include the option for a perpetual pastoral lease. This option was considered as part of the reform process. However, based on discussions with a wide range of stakeholders and in consideration of the other options being provided to pastoralists, this proposal was not advanced. The proposed removal of the Minister's discretion with respect to the renewal of pastoral leases that are compliant with all relevant terms, conditions and statutory obligations, will provide for a *de facto* perpetual lease while retaining the legislative incentives for lessees to meet their various obligations over the longer term.

The concept of registering diversification permits granted to pastoral lessees on the lease's Crown Land Title at Landgate was considered. This proposal was designed to provide administrative efficiencies and also recognise the substantial increase in value that certain permits can make to a pastoral lease. Such a system would inform potential purchasers immediately when they performed a search on the Crown Land Title. However, this proposal was discarded for two reasons:

1. In order to register a permit, a fee of \$160 must be paid (excluding any administrative costs to DoL should they register the permit on the lessee's behalf), which is a cost that lessees currently do not have to pay; and
2. Diversification permits are not interests in land. Any move to register a permit may give the impression that it is an interest in land, and confuse the issue, limiting any administrative efficiencies that might have been gained.

3.5 Other Jurisdictions

The other states and territories that manage systems of pastoral leasehold land are Queensland, New South Wales, South Australia and the Northern Territory.

On 17 October 2013, the Northern Territory Legislative Assembly passed amendments to the *Pastoral Land Act 1992* (PLA (NT)) to allow pastoralists to diversify pastoral land use and develop new income streams (Michaels and Noble 2013). These amendments to the PLA (NT) provide for the “non-pastoral use of pastoral land” by granting a permit to “use all or part of the land the subject of the lessee’s pastoral lease for a purpose that is not a pastoral purpose” (section 85A, PLA (NT)). The amendment is sufficiently broad to allow permits for conservation purposes, among other non-pastoral purposes. The permit is a registerable instrument under the Northern Territory’s *Land Title Act* and is transferrable with the lease if it is transferred to another pastoral lessee. Permits are allowed for a term up to 30 years, or the term of the lease, whichever is the lesser period (section 89, PLA (NT)), although a pastoral lessee may apply to have the permit extended. Previously, a permit was issued for a maximum of 5 years.

In December 2007, Queensland signed and began implementing pastoral tenure reform via the *Delbessie Agreement (State Rural Leasehold Land Strategy)*, (see http://www.derm.qld.gov.au/land/state/rural_leasehold/strategy.html). The Agreement, between the Queensland State Government, agriculture representative body Agforce, and the Australian Rainforest Conservation Society, provides a plan for the sustainable use, protection and rehabilitation of rural leasehold land. The Agreement allows for pastoral and agricultural leaseholders to renew leases, subject to negotiating a Land Management Agreement, for a standard term of 30 years, with longer terms for maintaining or improving good land condition (40 years) and also including Indigenous access and use agreements (up to 50 years). Perpetual leases are also possible under the Agreement, in certain circumstances. Perpetual leases granted prior to the enactment of the *Native Title Act 1993* also exist under the Queensland land tenure system.

In July 2013, the Queensland Government released the results of a review into the *State Rural Leasehold Land Strategy*, which seeks to streamline some of the approvals processes for lease renewals, provide clarity regarding compliance issues and reduce red tape around dealings in land. However, with the change in Government in Queensland in 2015, it remains unclear whether any of the recommendations around the *State Rural Leasehold Strategy* will be implemented.

New South Wales has a series of mainly perpetual agricultural and pastoral leases in the western areas of the state (37% of NSW) and has undertaken some land tenure reform in the last 10 years. As these perpetual leases generally predate the *Native Title Act 1993*, native title has been extinguished over them. Case law since the *Native Title Act 1993* came into effect has also established the exclusive possession

nature of perpetual pastoral leases in New South Wales. However, in NSW and Queensland, where a pastoral lessee may seek to improve security of tenure by moving from a term lease to a perpetual lease, that lessee would be required to follow the *Native Title Act 1993* future act process and negotiate an ILUA.

South Australia implemented pastoral land tenure reform in 1990 and has in place a 42-year rolling lease, with review periods every 14 years. A lessee undergoes an environmental assessment every 14 years and if the lease has been maintained in good condition the term is 'topped up' with a further 14 years. This arrangement predates the *Native Title Act 1993*.

South Australia's Pastoral Board has the power to approve other activities to be conducted on a pastoral lease, which allows for diversification. Rather than specifying how the rangelands are used in the Act, as is the Western Australian experience, the Board has the power to decide on a case by case basis. This high level of flexibility is problematic as it is not sufficiently transparent or consistent. Over time, Boards of different composition may (and have) decided differently on the same or similar issues. While some may consider this variety of views favourably, the Pastoral Board is not elected: membership of the Board is by appointment. The power to make significant changes in policy direction with respect to Crown land should rest with elected governments.

3.5.1 Reasons for different WA approach

Western Australia is proposing new tenure options that have some differences to the administration of Crown land in other states and territories.

While Western Australia will be the first State to have rangelands leases in the proposed legislative format, other states effectively have some of the flexibility of rangelands leases established in Acts of Parliament dealing with pastoral land. For example, pastoral lessees in Queensland can apply for additional uses on the lease provided they are complementary to the primary purpose of the lease (e.g. agriculture) and do not become the dominant use. However, a pastoral lessee is not prevented from undertaking other agricultural pursuits, because section 199A(3) of the Queensland *Land Act 1994* states that "term leases for pastoral purposes may be used only for agricultural or grazing purposes, or both". In other words, a pastoral lease may be used for grazing and/or agriculture (Qld Department of Natural Resources and Mines, 2013:4). A term pastoral lease in Queensland can run for 30 or 50 years.

The Western Australian rangelands lease will differ from other states and territories because there is no assumption of the primary purpose of the lease being pastoral or agricultural; it will provide for the broadest range of uses. The lease purpose(s) will be nominated by the applicant and assessed for their compatibility with and impact on the land. Western Australia has not adopted similar arrangements to states such as Queensland because changing the LAA in this way would require amendments to the

definition of "pastoral purpose". The native title implications of this are impractical, as the discussion in Section 3.4, above, demonstrates.

3.6 Existing State, Local and Federal Policies

The proposed options are consistent with several State Government policies:

1. Kimberley Science and Conservation Strategy – this strategy, to conserve the Kimberley region's unique values and provide new opportunities for employment through tourism, intended to oversee required amendments to the LAA to allow pastoral lease holders improved access to diversification options, although it no longer has oversight of the project, which is being run by the DoL separate to the Kimberley Science and Conservation Strategy;
2. Ministerial Taskforce on Approvals, Development and Sustainability - aims to identify opportunities, initiatives and reforms to streamline approvals process through administrative, institutional and legislative measures, while properly considering environmental, Aboriginal heritage, heritage, native title and planning issues; and
3. The Red Tape Reduction Group (RTRG) - supports the introduction of whole-of-government initiatives to reduce the amount of duplication of information required by government agencies and to introduce agency plans to simplify and modernise existing regulations and processes.

The proposed options are also consistent with the Australian Government's *Our North, Our Future: White Paper on Developing Northern Australia* (2015), which is the culmination of a long period of work by the Northern Australian Land and Water Taskforce (2009) and other, subsequent taskforces, comprising Ministers from the Commonwealth and the northern states and territory Governments (Queensland, Northern Territory and Western Australia).

In part, the White Paper reflects some of the recommendations contained in a 2009 report by the Northern Australian Land and Water Taskforce, including discussions around harmonising "pastoral lease conditions (including on Indigenous land) across northern Australia to allow greater diversification and flexibility in land use, subject to compliance with the principles of ecologically sustainable development, the objectives of the National Water Initiative and the ongoing coexistence of native title rights" (Recommendation 8).

The White Paper also reflects Recommendation 9, which states:

Australian Governments should review the variety of land tenure arrangements and water entitlements that exist across northern Australia, with a view to improving flexibility and harmonisation across jurisdictions and

creating property rights that underpin their bankability (ability to be used as security for investment capital).

The White Paper provides a list of "actions to support investment" for the pastoral lands, which it urges the "northern" governments to invest in. Four outcomes are:

- More certainty for investment;
- More diverse economic activity;
- Pathways to freehold; and
- Easier administration.

The Rangelands and Part 7 proposals are consistent with the majority of actions in three of the four outcome areas. However, it is not currently State Government policy to support the conversion of pastoral leasehold land to freehold. The outcomes that are supported and are part of the proposed legislative amendments, and the actions supporting them, are highlighted in the table below.

Outcome	Action
More certainty for investment	Bring forward the point at which leaseholders can apply for renewal of leases
	Introduce rolling pastoral lease renewal
More diverse economic activity	Introduce business friendly information on approvals to make investment simpler
	Introduce enabling legislation to allow transferable permits for non-pastoral use on pastoral leases
	Introduce template leases for large capital investments (100 years)
	Introduce templates for permits for a greater range of activities
Pathways to freehold	Develop template ILUAS to assist conversion of pastoral leases to freehold
Easier administration	Transfer control of 'inputs' (e.g. stocking) to other legislation
	Compensation costs to be borne by the prospective grantee or lessee
	Renew leases with minimal conditions
	Integrate data and maps for tenure, surface and subsurface details

Source: Commonwealth Government, 2015: *Our North, Our Future: White Paper on Developing Northern Australia*

In relation to the highlighted actions listed in the above table, the proposals are in accord with them as follows:

1. **Rolling pastoral leases:** DoL proposals include the statutory right of renewal for compliant pastoral leases, which is, in effect, a rolling lease provision. Leases will be renewed unless they are in breach of a condition of the lease or a provision(s) of the LAA.

2. **Transferability of diversification permits for non-pastoral purposes on a pastoral lease:** The proposed amendments will enable permits to be transferred with the lease when the lease is sold, rather than forcing the new lessee to apply for the permit once he or she takes over the lease. However, a permit cannot be transferred to a third party, because it is not an interest in land, but rather permission to perform an additional activity on the land under lease.
3. **Renew Leases with minimal conditions:** The Rolling Lease proposal provides for leases to be renewed without having to undertake a lengthy, bureaucratic process. In general, leases will be renewed with the same conditions as the expiring lease, although the Minister will reserve the right to impose new conditions or remove existing conditions during the process of renewal.
4. **Develop Template ILUAs:** DoL is developing template ILUAs for a range of tenure options, including freehold, and this work will ultimately assist proponents applying for rangelands leases or pastoral lessees seeking to extend the term of their existing leases to the maximum.

3.7 Extent of significant duplication or incongruity

The new options will not create duplication across different levels of governments as the State Government is the only body responsible for administering Crown land in Western Australia. However, Western Australia is the only state without either a perpetual or rolling pastoral lease. Those other states and territories established their perpetual pastoral leases *prior* to the NTA coming into effect, whereas provisions for a perpetual pastoral lease for Western Australia would be subject to native title.

However, a rolling lease, or a statutory right of renewal for a pastoral lease is proposed, provided that lease is compliant with all required terms, conditions and obligations. Such a lease is preferred over the perpetual lease since it provides for periodic review by the State, while also giving pastoralists security of tenure. Additionally, the approach ensures the legislative "teeth" for enforcing compliance with the lease terms and conditions, and the provisions of the LAA, remain, thus ensuring the sustainability and good management of the rangelands.

The rangelands lease is a new option that other states and territories do not presently have. However, its development was foreshadowed by the Productivity Commission in their Research Paper, "Pastoral Leases and Non-Pastoral Use" (2002). That paper suggested a shift in policy towards more neutral leasing arrangements to better facilitate non-pastoral land use, noting that this would need to be consistent with the broader institutional structure, including native title. The rangelands lease will make Western Australia's regulatory position regarding pastoral leases less restrictive and, therefore, more consistent with other jurisdictions.

Within Government, the early stages of the Rangelands Reform Program were guided by an interdepartmental Senior Officers Group to ensure that the legislative changes are consistent with existing legislation, particularly in relation to mining and conservation activities.

Additionally, the abolition of the Pastoral Lands Board and transferring all relevant powers to the Minister for Lands will bring the governance procedures into line with accepted practice across government. This proposal will remove administrative duplication and confusion by ensuring that all requests go to the one place (Minister), and do not require double handling as is currently the case.

At present, DoL officers are frequently required to develop briefing and decision papers for the PLB and then, after the PLB has made a decision, send a briefing on the same issue to the Minister for Lands for his decision, approval, or information. This doubles the administrative work of the Pastoral Lands Unit (PLU) within DoL, creating an unnecessary administrative burden via duplication. The proposed amendments to dissolve the PLB will remove administrative duplication, while still providing an avenue for the Minister to receive information and advice from a body of appropriately skilled and knowledgeable persons, with respect to the Rangelands.



4. Impact Analysis

4.1 Costs to Business

The gross and net costs to business included in this document are based on calculations found in Attachments 4 and 5. Attachment 4 refers to the non-regulatory options (Option 2 outlined above) for reform, while Attachment 5 provides for the legislative reforms (Option 3 outlined above), using three scenarios for profit per hectare (20 cents, 40 cents, and one dollar, respectively).

4.1.1 Native Title

The requirements of the NTA must be addressed if the types of tenure reform being proposed are to become a reality. Amending the LAA to offer the alternative forms of Crown land lease tenure, i.e. a rangelands lease and longer lease terms, are expected to be subject to a future act native title negotiation process, primarily through ILUAs, although other process may also be appropriate. The process is likely to impact differentially across the Rangelands, depending on a variety of issues, such as the nature of the proposed uses under the new lease, and the value of the land in question, in the eyes of the both the lessee and the native title claimants or holders.

The National Native Title Tribunal publication *ILUA or right to negotiate process: A comparison for mineral tenement applications* states that “ILUA negotiations have no set timeframes. It is up to the parties to determine how long the negotiations take.” The document also explains that ILUAs take time to negotiate because informed consent requires adequate consultation takes place with all native title interest holders/claimants. This consultation process may take six months or more. Once an application to register an ILUA is made with the Native Title Registrar, a further six months is allowed for a notification process and to consider any objections that are raised. In addition, many native title representative bodies may not have adequate resources to undertake the extensive negotiations required to complete ILUAs (depending on their complexity), making it difficult to estimate the total cost of the ILUA. They may also seek support from the applicant in this regard.

The legislation will be structured so that the future act will be triggered by the lessee taking up the new lease option, rather than the inclusion of these options in the LAA itself.

If lessees choose one of the new lease options being proposed, they may incur native title conciliation, negotiation and possibly compensation costs. The amounts

involved are difficult to estimate, because the nature of and time taken to complete negotiation will vary depending on the circumstances. Lessees will need to factor such expenses into their planning, should they seek alternative or extended leases, especially given Government is unlikely to provide financial support to proponents for native title negotiations.

Some pastoralists have received support to develop ILUAs where native title consent determinations have been made. The Federal Attorney-General's Department helps native title respondents with their reasonable legal representation costs under the native title respondent scheme. The eligibility test for legal representation costs was amended in 2012. The department considers a range of matters when determining whether to authorise legal representation costs, including:

- where a respondent's interests are likely to be adversely affected in a real and significant way by the native title proceedings, or
- where a respondent will derive a significant benefit from negotiating an Indigenous Land Use Agreement.

An estimate of legal costs for the negotiation of an ILUA over land in the Rangelands is up to \$30 000.

State Government support in the form of guidelines for negotiating an ILUA and a template ILUA will assist the parties to reach agreement. Starting with some standardised terms and conditions will enable negotiators to reduce the time required to reach agreement. Currently the Department of Lands is establishing guidelines and template ILUAs to assist proponents of projects under the Water For Food program. These aids will be equally applicable to negotiations between proponents for a rangelands lease or an extended term pastoral lease and native title parties.

4.1.2 Rent and Rates

The rangelands lease is likely to increase the value of the land, which may lead to higher rent costs in the future. However, it is expected that most leaseholders interested in the new form of tenure, the rangelands lease, would be planning for business growth through additional sources of income. Therefore, business growth is likely to see rent cost grow in line with business income.

A pastoral lessee with a statutory right of renewal will continue to pay pastoral lease rent, which will continue to be calculated the same way as at present. Rents are currently determined by the Valuer-General under section 123 of the LAA. As with existing pastoral leases, additional rent is payable for any activities carried out by pastoralists under diversification permits.

Rangelands lessees will pay rent based on the particular land uses under the lease. Rent will be determined by the Minister, who takes advice from the Valuer-General (as with other Crown Leases). Generally, it is expected that rangelands lessees will

pay higher rent than pastoral lessees because of the higher, value-added use of the land. In certain cases however, the Minister may set a lower than market rent for a purpose such as conservation or Aboriginal land management activities, or staggered rent for a start-up enterprise, or some other purpose that is considered to be a lower value land use. This occurs with other Crown leases. Thus, rents may be higher or lower, depending on the situation. The expected trend over time is that rents will increase, reflecting the rising value of the land. However, rents may vary from time to time, depending on the response by government to the physical and economic circumstances facing lessees in any given period – i.e., rent relief for hardship or natural disaster.

Local government rates are also anticipated to increase for rangelands leases based on higher unimproved values (UV). UV for local government rate setting is based on a formula of 20 times the pastoral rent. However, although the UV is established in this manner, local governments may, from year to year, apply differential rates in the dollar, based on their need to meet annual budget programs.

4.1.3 Other Costs to the Pastoral Industry

Pastoralists have expressed concern that the rangelands lease proposal may have adverse effects on the pastoral industry. Their main concern revolves around the loss of "critical mass" in the industry, as new uses of the rangelands are facilitated by the new lease, constraining growth opportunities, reducing pastoral industry capacity to attract investment in pastoral related infrastructure, services and labour and increasing costs. However, the new tenure and subsequent diversity of activities in the Rangelands may produce a net benefit for the economy and pastoral industry, potentially enabling some restructuring of the pastoral industry. One benefit may be that degraded land that can no longer support pastoralism finds alternative productive uses under a rangelands lease.

Additionally, current pastoral leases that do not operate at full capacity, or are inadequately managed for either pastoral productivity or sustainable land use, may have a greater negative impact on regional services and infrastructure than a well-conceived and managed operation under a rangelands lease.

Prior to the grant of a rangelands lease, the Minister will take into consideration the impact that such a grant would have on the pastoral industry in the surrounding area.

These amendments will support the increasing interest in economic diversification in the Rangelands that has emerged with programs such as Water for Food, which is finding suitable land and water sources for intensive food or fodder production.

The requirement to undertake compulsory land condition monitoring, identified in 3.3.7 above, is a new element in lease management for pastoralists and other land managers in the Rangelands. Monitoring of the condition of the land under the lease strengthens current LAA requirements for lessees to "use methods of best pastoral

and environmental management practice, appropriate to the area where the land is situated, for the management of stock and for the management, conservation and regeneration of pasture for grazing” and to “maintain the indigenous pasture and other vegetation on the land under the lease to the satisfaction of the [Pastoral Lands] Board”. There is no intention to change this requirement, other than placing the decision making powers with the Minister for Lands rather than the PLB.

The on-ground monitoring methodologies have been designed to be consistent, repeatable, objective, unobtrusive, and to provide sufficient evidence, in conjunction with remote sensing, of rangeland condition as to enable the Minister for Lands to determine whether land managers are in compliance with their statutory responsibilities to manage the land appropriately. The proposed requirement on land managers is to provide one (1) photograph per year for between 9 and 45 designated sites depending on the size of the lease and other factors, such as number of and types of land systems on the land under lease, as part of existing reporting requirements in the LAA. Where a land condition issue is identified, the Minister may require lessees to provide additional monitoring data, as is currently the case under the PLB Compliance Policy.

However, prior to initiating any enforcement process with regard to land management, the Minister must consult one or more rangeland condition experts from a panel established in consultation with the pastoral and rangelands industries. The Minister must then have regard for, but is not bound by, the expert advice received, prior to deciding whether to begin an enforcement process on land condition management grounds.

In the context of the value and size of pastoral and rangelands leases, the cost and time of meeting this requirement is relatively small. Lessees may even be able to meet the compliance requirements during the course of their day-to-day land and stock management activities.

4.2 Costs to Consumers, the Community, Economy and the Environment

In terms of wider, less direct costs, impact on consumers is not anticipated. Consumers are likely to benefit in the longer term from increased choice in food markets, or development of alternative domestic tourism markets. Additionally, tourism in the Rangelands may be opened up through a more diverse use of leases, as the international tourism market expands into the niche of wilderness experiences.

Some communities may experience negative impacts where the use of the rangelands transitions to other activities with lower labour requirements. This is expected to be a relatively gradual process, allowing some time for adjustment. However, it is also likely that new jobs will be created through regeneration of native

flora, other conservation works and stewardship of the rangelands, as well as new businesses that may be established as a result of the availability of a rangelands lease, e.g. in the fields of science and innovation. Additionally, increased tourism would positively affect employment creation given it is a labour intensive industry. The net employment effect is expected to be positive, albeit small.

4.2.1 Stakeholder impacts

Some stakeholders expressed concerns that adoption of the rangelands lease has the potential to lead to population reduction in the Rangelands. In some instances, this may be a valid concern of the pastoral industry particularly, as discussed at 4.1.3 above. However, opportunities for new business ventures afforded by the provision of the new rangelands lease are anticipated to attract new people into the Rangelands and be the means by which some families are able to create new income streams that will enable them to stay on the land.

4.2.1.1 Aboriginal Impact

Impacts on Aboriginal stakeholders are expected to be mostly positive, particularly for those Aboriginal organisations that already hold pastoral leases. Some Aboriginal pastoral leases would suit purposes such as tourism and cultural uses and may be well placed for conversion to rangelands leases. Concerns have been raised about native title being extinguished or cases of protracted litigation arising from the tenure reforms. Government considers the NTA provides adequate protections for all parties, meaning all native title issues must be resolved via the NTA framework. Additionally, the rangelands lease will provide the same reservation for Aboriginal access and will coexist with native title rights and interests in the same way as pastoral leases do. Government will support parties to address native title negotiation by providing access to guidelines and a template Indigenous Land Use Agreement (ILUA), leveraging off the work already undertaken in the Water For Food project.

4.2.1.2 Conservation Impact

The potential for the more degraded pastoral land to be destocked and leased for conservation purposes means the impact for conservation interests is also expected to be positive. The rangelands lease could allow more land to be held for private conservation, which could be a tool that links with and complements public conservation reserves and national parks. Conservation interest concerns include:

- the need for more detail on the type of activities that could be undertaken;
- what the process for granting a rangelands lease will be;
- whether there will be environmental targets as conditions for longer terms of tenure;
- which body will be responsible for administering the rangelands lease; and

- whether decisions about land use will be taken as part of a broad strategic planning framework.

The Government response to these concerns is:

- the permitted uses under a rangelands lease are intended to be broad in order to encourage a variety of activities that are generally consistent with the preservation and ongoing management of the rangelands;
- the grant of a rangelands lease will be subject to the overriding Crown land tenure allocation policy, which requires appropriate tenure for the proposed use. The grant will also be subject to the usual approvals, comment and referrals process from the Department of Mines and Petroleum (DMP), Department of Environmental Regulation (DER), local government and other relevant agencies, depending on the particular proposal. In addition, the appropriate future act process under the NTA will need to be completed before a rangelands lease could be granted. This is most likely to be the negotiation of an Indigenous Land Use Agreement (ILUA) with the native title holders or claimants;
- environmental targets will not be set but the intent is to encourage and promote good land management practices and ensure that land condition is regularly monitored, measured and reported on;
- the rangelands lease will be granted and administered by the Minister for Lands;
- prior to the grant of a rangelands lease the Minister will take into consideration a number of factors including relevant state and local planning strategies.

Environmental impacts through take up of rangelands leases are expected to be positive. Conservation stakeholders support this view in principle, with the general caveat that land use is matched to land capability, decisions are overseen by a body representative of the broader community, and targets are set for rangelands condition improvement. The rangelands lease is a form of tenure that will be suitable for conservation purposes. These comments have been considered in the development of guidelines and process for administering the new lease. The statutory right of renewal for pastoral leases will only be available to those lessees whose leases are fully compliant with the terms of the lease and the LAA. This should generate environmental benefits as both pastoral lessees invest in long-term positive management of the rangeland condition of the lease to ensure continuity of tenure. A rangelands lessee will have similar requirements in relation to compliance with land management laws, land condition management, monitoring and reporting.

The Department of Parks and Wildlife (DPaW) is supportive of a rangelands lease as a significant step toward providing a mechanism to reduce pastoralism in the more degraded areas of the rangelands. DPaW has some concerns regarding targets for the protection and restoration of rangeland condition in order that the new lease

options address issues of ongoing ecological sustainability. The Government's response to this, as indicated above, is that other, more positive mechanisms should be used to support sustainability.

4.2.1.3 Carbon Sequestration/Carbon Farming Impact

The rangelands lease is intended to provide appropriate tenure for carbon sequestration activities. The Commonwealth Government passed the *Carbon Farming Initiative Act* (CFI Act) in 2011, enabling the Carbon Farming Initiative (CFI). Farmers and land managers can earn carbon credits by storing carbon or reducing greenhouse gas emissions on the land (see www.climatechange.gov.au/cfi) as a result. These credits can then be sold to people and businesses wishing to offset their own emissions. These projects are ideal for private landowners interested in forest projects in higher rainfall areas of the state. However, it could also apply to management of the rangelands to store carbon at lower rates, but over vast areas. This use of a rangelands lease for carbon sequestration is subject to further development of State Government policy in relation to carbon activities on Crown land.

Any financial return from undertaking carbon sequestration will be determined by the market, which in turn is partly influenced by the operation of the Commonwealth's *Carbon Credits (Carbon Farming Initiative) Act 2011*. It will be a business decision for a lessee to make as to whether there is likely to be sufficient return in carbon activities to make the decision to diversify into those activities.

4.2.1.4 Mining and Petroleum Impact

In the development of the new tenure options, DoL consulted with the mining industry about potential impacts. The legislation has been drafted to ensure impacts on the *Mining Act 1978* are minimal, which means the ability to explore and develop mineral and petroleum resources will not be affected by the issue of a rangelands lease. Access for exploration and mining developments and, in particular, the power of the Minister for Mines to issue tenements over rangelands leases will have the same protocols to the current term pastoral lease, and will be treated under the *Mining Act 1978* in the same way. The parties involved will need to consult and negotiate access as occurs with existing leases.

4.2.1.5 Tourism Impact

Impact on the tourism industry is potentially positive because the in-built flexibility of the rangelands lease will facilitate a new and broader mix of tourism initiatives in some of the State's tourism corridors. The tourism industry's concerns included:

- tenure for high level investment;
- access for third party investment as well as public access on leases for tourists to coastal areas and other sites of interest.

The government response is:

- more secure tenure, such as LAA s.79 leases, are more appropriate for more investment intensive facilities;
- third party investment would be possible under a rangelands lease; and
- public access will be the same as for existing pastoral leases:
 - Pastoral lessees have the right to charge a fee to cover reasonable costs for maintaining access to areas on their lease frequented by the public.

It should be noted though, that the Rangelands Reform Program does not address, nor is it intended to have an impact on access routes.

4.2.2 Small Business Development Corporation

The Small Business Development Corporation (SBDC) was consulted regarding these impacts and advised that to address the future "critical mass" concerns of the pastoral industry, they support a process of granting a rangelands lease that takes into account the existing leases and current uses of surrounding land. The potential effect on residents in nearby towns and the region in general should also be considered.

In response, Government notes that the objective of land tenure reform is to provide additional options to increase diversity of use of the Rangelands, enable a diversified economic base for the improved management and preservation of the rangelands, and improve security of tenure for pastoral lessees. Rangelands leases will provide flexibility for diversified land uses; therefore, rangelands leases are likely to support higher value uses. Moreover, as the legislative amendments facilitate change in land use, opportunities will emerge to regenerate degraded rangelands, thus providing an additional dividend to residents and the State.

The overriding policy principle will be to take into account the individual circumstances of the rangelands lease and its proposed uses, ensuring appropriate uses in appropriate locations. From a planning viewpoint, the impact of the land tenure changes will be monitored, in terms of their impact on broader regional economies. In addition, applicants for rangelands leases will need to identify their proposed use(s) of the lease, provide business plans, and address native title requirements. These activities are not usually completed so there is likely to be a period of gradual adjustment to any new form of land tenure rather than sudden wholesale change.

The SBDC is also supportive of an option for staggered rent for start-up enterprises under a rangelands lease and the use of a template ILUA. This is consistent with information provided on the rangelands lease in the Rangelands Reform Tenure Options Discussion Paper – April 2011.

4.3 Costs to Government

The gross and net costs to Government included in this document are based on calculations found in Attachments 4 and 5. Attachment 4 refers to the non-regulatory options (Option 2 outlined above) for reform, while Attachment 5 provides for the legislative reforms (Option 3 outlined above), using three scenarios for profit per hectare (20 cents, 40 cents, and one dollar, respectively).

As indicated earlier, monitoring of rangeland condition is heavily dependent on self-regulation. Under the current restrictive lease arrangements, increased non-compliance with lease conditions is resulting in additional monitoring and compliance cost to the State. With the proposed changes to legislation, there will be some reduction in the number of non-compliant leases, although this will ultimately depend on the level of uptake of the new options.

The likely long-term impact on DoL staff numbers is expected to be minimal – no more than two to three additional FTE over a 10-year period. There may also be additional, minor survey costs to Government. Increasing staff requirements are therefore likely to be accommodated within normal growth, i.e. around two to three percent per annum.

The additional lease options will be managed within DoL. Initially, these new options are unlikely create additional workloads requiring more staff. This is because it will take time to address native title and the fact that most pastoral lessees can, and are likely to, continue utilising their pastoral term lease tenure option.

The likely minimal impact assumes that there will not be wholesale uptake of the Rangelands lease. Under a realistic uptake scenario, 15 additional actions per year over the next 10 years are expected (based on the estimated 150 new leases or permits over 10 years). Analysis of the last five years of DoL and RDL annual reports (see Table 4 below), shows the cost per Crown land action rose sharply between 2010-11 and 2011-12, before becoming relatively stable over the following years.

Table 5: Cost per Crown land Action – 2009-10 to 2013-14

Year	Cost per Crown land action
2009-10	\$3 427
2010-11	\$3 486
2011-12	\$5 652
2012-13	\$6 610
2013-14	\$6 302

Source: RDL Annual Reports 2009-10 to 2012-13; DoL Annual Report 2013-14

The increase in 2011-12 was mostly caused by less actions being undertaken due to less property transactions and increasing complexity with major State projects. On the basis of an average of the final two years' results (\$6 456), the expected increase in cost of the 15 additional actions per year over the next 10 years is \$96,840 per

year. Assuming that there are two subsequent actions per year on an ongoing basis for each new lease created (ignoring that there may be less actions on existing leases as many new leases will replace old ones), the additional cost over 10 years could be up to \$8.095 million (see Attachment 5, \$1 per hectare sheet, cell L84).

However, the total cost of administering the Crown estate over this ten year period may be calculated as \$419.127 million, assuming total growth in cost of 4 percent per annum. This produces an average additional cost of 1.94 percent over the 10 years, with lower percentage cost in the initial years and higher in later years, on the basis of some cumulative effect (see Attachment 5, \$1 per hectare sheet, cell L79).

Generally, the moderate cost increases will be counterbalanced by increasing rent income to Government over time. Costs will tend to be absorbed, unless wholesale uptake of new options occurs (not expected), or Government provides support for native title negotiation costs (also not expected due to current Government policy).

Local Governments are unlikely to be impacted as they will likely manage costs through their rates systems. Assuming that a pastoral lessee decides to change to a rangelands lease in order to expand the use of that land, increases in unimproved value are expected to deliver increased rate revenue over time. In particular areas, some local governments may be impacted by additional infrastructure costs such as town amenities and road upgrades. As these impacts are expected to be more gradual, local governments are expected to be able to adjust their budgets or secure additional funding to meet such challenges.

The rights of local governments to determine the types of and planning for developments in their local government areas will not be impacted by these reforms. Any developments arising from the new tenure options would need to be approved under the existing planning systems.

Local governments are not expected to be adversely affected by increasing use of non-commercial activities, such as conservation. If a lease remains privately held, whether it be a pastoral or a rangelands lease, then commercial lease rents will apply. Such rents should lead to local government rates being set commensurate with private use.

The critical mass concern of the pastoral industry may be equally applied to the local governments that support remote communities. However, the same response as to pastoral industry concerns applies – new lease types will only supplant the existing term pastoral leases where sustainable higher order uses of the land are identified, or where the land is no longer capable of being run as a sustainable pastoral enterprise, whether due to terms of trade or degradation of the rangelands resource.

With respect to land condition monitoring, DoL has identified some initial, start-up costs for establishing the remote sensing component of the new monitoring regime.

However, DoL will seek to cover these start-up costs, including establishing the appropriate ICT infrastructure, training of existing staff to undertake the processing and analysis of satellite images and other ancillary requirements, via a funding request to the Royalties for Regions Fund. Ongoing costs would be confined to maintenance of the system and, as a result, close to negligible.

4.4 Benefits

The amendments will assist in changing the focus of economic activity towards a more diverse range of activities than just pastoralism. Although the trend towards diversification is already evident in the Rangelands, the legislation will facilitate this process in a planned and sustainable, rather than ad-hoc, manner. The economy and the ecological integrity of the Rangelands are therefore expected to benefit as a whole.

The rangelands lease will also positively affect competition by facilitating more flexible, broader economic and social uses of the Rangelands. The tourism, conservation and scientific bioprospecting industries may be stimulated as alternative uses of the Rangelands. Indigenous groups, particularly those already holding pastoral leases, may be able to use the Rangelands for broader uses and more readily integrate cultural use and tourism into new business ventures.

There is currently much interest in carbon sequestration in the Rangelands as a potential enterprise that could generate saleable carbon credits. The rangelands lease is designed to be flexible enough to allow for future development opportunities, including carbon sequestration activities.

Provisions for land condition monitoring will give the Minister for Lands and land managers a better understanding of the state of the rangelands resource. This will occur by use of both satellite technology and regular on-ground data collection. As a result, there is a real opportunity to ensure land managers are preserving and/or improving the condition of what is an extremely valuable asset for the people of Western Australia. Regular data can identify areas of concern early and assist land managers in formulating strategies to either arrest or reverse decline in rangeland condition.

Such data can also provide land managers with clear evidence that their land management work is being successful, and also provide the Minister for Lands with clarity regarding rangeland condition for enforcement purposes. In many cases, the satellite data may show part of a lease to be a problem area, but in concert with on-ground images, that area could be identified as part of a natural cycle of dieback and regeneration, fire or flood damage, or some other issue out of the control of the land manager. Where the issue is within the control of the land manager (e.g. overstocking), the Minister will have evidence that will enable a clear rationale for enforcement action and the land manager will have information regarding the

specific areas and, most likely, a good understanding of what needs to be done to remedy the issue (e.g. destocking and/or fencing off the affected area of the lease). This is a clear benefit to both the land managers and the State.

4.5 Costs verses Benefits

4.5.1 Quantification of costs

The following scenario was developed to indicate the quantification of costs under a model considered most likely to eventuate through the proposed legislative changes. Supporting calculations for this scenario are at Attachment 5.

There are currently 493 pastoral leases being administered in the Western Australian Rangelands by around 460 pastoral lessees. It is assumed that over the next 10 years there will be successful applications for 100 rangelands leases and 50 other lease changes requiring native title negotiations involving at least ILUAs; i.e. for additional diversification permits or increasing the length of a term pastoral lease.

Native title: The total cost of the ILUA negotiations assuming an average cost of \$50 000 each would be \$7.5 million. Although it was stated above that native title negotiations have commonly been in the order of \$30 000; for analysis purposes, and given the variability and uncertainty of the nature of these costs, the cost has been increased to \$50 000 to cover the possibility that the average cost could be higher in the future. Compensation costs have not been estimated as part of the discussion on native title costs, due to the fact that each dealing would need to be analysed on a case-by-case basis. Government policy on compensation is currently under development and testing, and reliable estimates cannot be provided at this stage. Inclusion of such costs would increase the total funds required to resolve native title for the Rangelands lease. The costs included in the analysis are assumed to be one-off costs. The template ILUA DoL has developed may reduce this cost.

Rent: DoL assumed that the additional rent cost payable on the 100 rangelands leases is 100 per cent higher in comparison to a standard term pastoral lease and that pastoral lease rents over this period average \$5 000 (this rent amount is not a “target” amount, it is based on the current average annual rent plus a 25 per cent increase). Pastoral rents may vary considerably from region to region, depending on the underlying value of the land; for example, higher than average in the Kimberley, much lower in the Gascoyne or Murchison. This pattern would also be evident for a Rangelands lease. A rent of \$5 000 under the existing formula would equate to unimproved land value (UV) of \$250 000 (rent is 2 per cent of the UV). Therefore, under these assumptions, the average annual rent for a rangelands lease is \$10 000. As Rangelands leases are anticipated to be for a range of potentially higher value uses, the underlying value of the land is expected to be higher.

The increase in rent payable across the 100 rangelands leases would be \$500 000 per annum or \$5 million over 10 years and the rent payable across the 60 other lease types would be \$60 000 per annum or \$600 000 over 10 years. The total cumulative increase over the ten year period, given a staggered pattern of low uptake in the early years and steady state uptake in the later years, is \$2 059 000 (see Attachment 5, \$1 per hectare sheet, cell L23). This assumes no rent increase over this period.

Local government rates: Rates may vary depending on the location of the lease and the amount of money a local government would raise in any particular year to meet the anticipated budget cost of shire operations. However, the assumption is that, local government rates may increase for these lease options over the 10-year period in question, due also to the expected increase in UV. There is a low level of guidance in the public literature to quantify local government rates. However, the amount available indicates shire rates and pastoral rents are roughly equal. Therefore the working assumption is that local government rates would also increase by 100 per cent for the rangelands leases. The cumulative increase in rates over the 10 year period would also be \$2 059 000 (see Attachment 5, \$1 per hectare sheet, cell L24), adding to the total cost increase.

Pastoral land is also subject to being rated for a contribution to vermin control. Rangelands lessees will also be expected to pay this contribution. Vermin rates for Rangelands lessees are likely to be comparable to pastoral lessees, meaning no net cost increase when a pastoral lease converts to a rangelands lease.

The anticipated additional costs to business over ten years are summarised in Table 6 below. The total cost of \$11.618 million has been included in the cost benefit analysis. There has been no estimate of the capital costs to be undertaken by proponents over this time frame. As the level of investment will vary depending on the project, or the number of projects per lease, this is not considered feasible.

Table 6: Total Anticipated costs to business for Rangelands Lease up-take

Cost Item	Amount per Item
Native title/ILUA negotiations	\$ 7 500 000
Rent	\$ 2 059 000
Shire rates	\$ 2 059 000
Total	\$11 618 000

Source: Attachment 5, \$1 per hectare sheet, lines 22-25

State Government costs: These apply to each of the cost benefit analyses undertaken and have been calculated in the scenario analysis on the basis of the cost per Crown Land action, which is the total recurrent budget allocated to the Department of Lands divided by the total number of crown land actions. These statistics are reported in the DoL Annual Report under Effectiveness Indicators. As

per above, an average of the two figures of \$6 456 per Crown Land action has been used in the analysis.

4.5.2 Quantification of Benefits

Given the range of proposed options and the complexity in calculating return from such diverse activities, no detailed quantitative analysis of benefits has been possible. In its place, a range of income estimates has been adopted, based on additional income on a per hectare basis, from a near breakeven position to one that would represent a significant lift in income. The ranges of alternative incomes considered are: a rangelands lease could generate an additional 20c per hectare, 40c per hectare and \$1 per hectare. The level of income from diversification permits is also set at incremental steps of 10c per hectare, 20c per hectare, 40c per hectare and \$15 000, \$30 000, and \$50 000 per annum respectively. The scenarios assume these tenure changes occur over an area of 15 million hectares, around one sixth of the total pastoral estate. If this area were increased the model would produce higher net benefits and if reduced would produce lower net benefits. The lower range estimates are conservative, with other benefits such as conservation and heritage not valued.

The net present value (NPV) has also been calculated for the cost of these scenarios to Government, based on the flow of additional rent versus additional administration costs. This produces a NPV of -\$2 706 290. A discount rate of five per cent has been used to reflect a realistic direct cost of capital to government. This negative NPV (NPV Administration Costs) is added to the three enterprise scenarios (NPV Additional Income) to obtain a net NPV (Benefits less Costs) that accounts for the minor impact on Government costs.

State Government benefits: The analysis shows that there will be net costs to government rather than net benefits. The only tangible benefit for government that has been identified is increased rent. However, the net cost will not be large and the State will benefit as a whole through the freeing up of development opportunities. There are also intangible benefits to government from the diversification of the pastoral industry if other, more profitable enterprises can be found, as this will reduce the regulatory burden in the longer term.

Table 7: Summary of the Net Present Value for Options 1, 2, and 3

NPV Analysis	NPV Benefits (Additional Income) \$	NPV (Administration Costs) \$	Benefits less Costs (\$)
<i>OPTION 1: No change</i>	Nil	Nil	Nil
<i>OPTION 2: Non-regulatory option</i>	2 185 258	-1 547 163	638 094
<i>OPTION 3: Scenario 1 - Rangelands lease 20c/ha, Permit \$15 000</i>	919 662	-2 706 290	-1 786 621

<i>OPTION 3: Scenario 2 -</i> Rangelands lease 40c/ha, Permit \$30 000	8 381 597	-2 706 290	5 675 307
<i>OPTION 3: Scenario 3 -</i> Rangelands lease \$1/ha, Permit \$75 000	30 767 404	-2 706 290	28 061 114

The quantifiable benefits produced by the model represent increased lessee income derived from having been stimulated by new lease options to take up better enterprise options. Therefore, the increased revenue is in the hands of the lessees.

A discount rate of eight per cent has been used to calculate the above net present values that apply to the benefits calculations, that is, calculation of additional income. This rate reflects a more realistic rate for the assessment of commercial opportunities given business retail rates of borrowing.

The NPV analysis covers the three options outlined in Section 3. There is no benefit cost analysis for Option 1, as this is the no change option, i.e. no expected additional investment that will produce additional income and no expected additional costs. Option 2 is the non-regulatory option involving administrative streamlining and greater encouragement of diversification.

The models described produce benefits that are summarised in Table 7 above.

Under Option 3, participating lessees effectively break even on the additional costs in the fourth year of taking up the tenure options for Scenario 2 and in the third year for Scenario 3. Scenario 1 does not produce a positive benefit, indicating that minor increases in productivity from the rangelands would not exceed the additional costs for both business and government combined.

Discussion Point:

Having seen the cost-benefit analysis (summary above), are you more or less likely to apply for a Rangelands Lease? Why?

4.6 Extent to which options achieve the objectives

To recap, the objectives of the proposal are to:

1. Diversify and intensify the economic base and social use of the Rangelands;
2. Allow for more diverse uses and activities to be carried out on the Rangelands by both traditional pastoralists and new entrants;

3. Improve the management and preservation of the condition of the Rangelands; and
4. Improve the security of tenure for existing pastoralists.

The proposed options to amend the LAA will either assist to diversify the economic base of the Rangelands and increase diversity of use, such as with the rangelands lease and new diversification permits, or improve the security of tenure for existing pastoralists by increasing the term of the pastoral lease and providing the ability to renew a pastoral lease without Ministerial discretion.

The benefit cost analysis shows that there is a net benefit in implementing the proposed range of new tenure options under Option 3 only if they are significantly more profitable than the status quo. Option 2 produces a minor net benefit.

The rangelands lease will also improve the preservation of the condition of the Rangelands by providing non-pastoral options, particularly in the more degraded areas. The benefits in dollar terms of such improvements in condition are not factored into the analysis undertaken. However, these benefits are vital, both for the protection of the Rangelands resource, and for the retention (or recuperation) of the value of the Rangelands as an asset for the State and the people of Western Australia.

Discussion Point:

Please detail any other costs, benefits, advantages, disadvantages or issues not discussed in the Consultation Paper that you think should be considered?

Discussion Point:

Please provide any further comments on the proposals to amend the Land Administration Act 1997 that you may have.



Summary of Discussion Points

- Do you consider that the forms of tenure currently available in the *Land Administration Act 1997* are adequate for current and future businesses in the Rangelands? If so, why? If not, why not?
- Should the current legislative framework be retained? If so, why? If not, why not?
- Are there other possible non-legislative changes that would assist pastoral businesses? If yes, please provide as much detail as possible.
- Would you consider applying for a rangelands lease? If so, for what purpose or purposes? If not, why not?
- Are you supportive of the proposed statutory right of renewal for compliant pastoral leases? If so, please explain why. If not, please provide reasons.
- Do you think that the amendment that enables pastoral lessees to have a right to appeal to the SAT if the Minister for Lands makes an adverse decision regarding the renewal of their lease is fair and reasonable? If so, do you agree that the SAT is the most appropriate venue for such an appeal? If not, why not?
- Is it of value to pastoral lessees to have the option to increase the term of their lease to a maximum 50 year term? If so, why? If not, why not?
- Is there any advantage in being able to transfer permits with the lease to an incoming lessee? If so, why? If not, why not?
- Is the current requirement for a development plan an adequate tool to support the ecologically sustainable management of a pastoral lease? If so, why? If not, why not?
- If a development plan is not adequate, what issues should be covered by the proposed management plan? Are there any other issues that should be considered for inclusion? Please provide as much detail as you can.
- Is the proposal to bring the administration of pastoral leases, the proposed rangelands lease, and other leases that may be issued in the Rangelands under the single decision making authority of the Minister for Lands appropriate? If so, why? If not, why not?

- **Is the obligation for the Minister to consult and consider the advice of an independent expert prior to making an adverse decision on rangelands condition management a fair process? If not, why not?**
- **Do you consider the proposed PARAB to be an appropriate body to provide strategic advice to the Minister for Lands on matters related to the sustainable development of the Rangelands? If so, why? If not, why not and from whom should the Minister for Lands receive such strategic advice?**
- **Do you think the proposed Pastoral and Rangelands Advisory Board targets the appropriate mix of experience and expertise on issues and industries to provide the Minister for Lands with strategic advice on the Rangelands? If so, why? If not, which areas of expertise do you think are lacking, or which areas of expertise listed do you think are not required?**
- **Having seen the cost-benefit analysis (summary above), are you more or less likely to apply for a Rangelands Lease? Why?**
- **Please detail any other costs, benefits, advantages, disadvantages or issues not discussed in the Consultation Paper that you think should be considered?**
- **Please provide any further comments on the proposals to amend the Land Administration Act 1997 that you may have.**

5. Consultation

5.1 Method of Consultation

Following on from the major consultation processes undertaken in the two industry reviews held in 2009, further consultation with a wide range of stakeholders was done, with any concerns raised being noted. Key stakeholders consulted via verbal briefings were the same as the stakeholder group that will be consulted with the release of this Consultation Paper.

These include:

- Pastoral Lands Board,
- Pastoralists and Graziers Association of WA (PGA),
- Western Australian Farmers Federation,
- Environmental Protection Authority,
- WA Tourism Council,
- Australian Bankers Association,
- Department of Fisheries;
- Department of Treasury;
- Small Business Development Corporation;
- Central Desert Native Title Services;
- Yamatji Marlpa Aboriginal Corporation;
- Goldfields Land and Sea Council;
- Kimberley Land Council
- Conservation Council (WA);
- Rangelands NRM;
- Forest Products Commission;
- Chambers of Minerals and Energy, including:
 - URS;
 - Xstrata;
 - DLA Phillips Fox;
 - AngloGold Ashanti;
 - St Barbara;
 - Rio Tinto; and
 - Cliffs Natural Resources Pty Ltd;
- Association of Mining and Exploration Companies;
- Mr Kent Broad, Auscarbon Group;
- Western Australian Local Government Association (WALGA);
- Conservation Commission;
- WA Beef Council;
- Gondwana Link;
- Great Western Woodlands Collaboration,
- Conservation Commission;

- Landgate, Valuer General's Office;
- WA Beef Council;
- State Solicitor's Office;
- Mr Mark Alchin, Outback Ecology; and
- The Hon. Robin Chapple MLC, member for Mining and Pastoral.

In addition, information about the Program is on the DoL website and it has also been advertised in the print media. Letters advising program commencement were sent out to key stakeholders inviting feedback, including all pastoralists.

A range of key government agency stakeholders were consulted and nine of these were represented on the Senior Officers' cross-agency steering group, which met on eight occasions. The steering group has now served its purpose, and key agencies and other stakeholders will be consulted once the draft Bill is ready, together with this Consultation Paper.

Detailed consultation is ongoing for the proposed consequential amendments to the LAA. Consequential amendments have been drafted for the *Mining Act 1978*, *Petroleum and Geothermal Energy Resources Act 1967*, *Wildlife Conservation Act 1950*, *Local Government Act 1995*, *Valuation of Land Act 1978*, *Rights in Water and Irrigation Act 1914*, the *Agriculture and Resources Protection Act 1976*, *Environmental Protection Act 1986* and the *Conservation and Land Management Act 1984*.

5.2 Discussion Papers and responses received

A Rangelands Tenure Options Discussion Paper outlining the proposed tenure options was developed and sent to the key stakeholders on 21 April 2011 and subsequently posted on the RDL website. RDL requested feedback submissions be provided, firstly by 11 May 2011, later extended to 20 May 2011. In total, RDL collected 73 written responses during the four week submission period. In September 2011, after analysing the responses, RDL prepared the *Summary of Response to the Rangelands Tenure Options Discussion Paper*. This paper summarised the main issues raised in the feedback and the government response to each one. A total of 36 specific or common issues were identified and responses provided for each one. Where alternative actions to address tenure were proposed by stakeholders, these were investigated and explanations provided if the idea was not considered feasible. In addition, a summary was produced of the six main amendment actions proposed. This was three more than originally proposed in the discussion paper.

In summary, the pastoral industry's initial feedback focussed on support for the concept of a perpetual lease, whilst raising concerns about the rangelands lease. In general, the pastoral industry supported the then-proposed perpetual pastoral lease, with some pastoralists also expressing the need for Government to support the

native title negotiation process, preferably through a state-wide ILUA. In the feedback to the Rangelands Tenure Options Discussion Paper, 27 out of 46 (59%) pastoral respondents expressed support for the perpetual pastoral lease and seven requested a Government sponsored state-wide ILUA.

A considerable number of the pastoral industry respondents did not support the rangelands lease. A total of 19 out of 46 (41%) either opposed the rangelands lease or considered that it would be poorly supported or problematic. There were 15 (33%) who considered the rangelands lease would have a detrimental impact on the pastoral industry due to its potential to allow other users of the Rangelands to establish uses that are inconsistent with pastoralism. Only three (6%) respondents in this group expressly supported the rangelands lease.

Pastoralists have also raised a number of other industry issues and requested consideration of a range of other measures in relation to amending the LAA, some of which are understood not to be feasible due to native title future act concerns, for example, changing the definition of pastoral purposes in LAA s.93 to be consistent with the NTA definition, allowing greater diversification options without the need for a permit (see 4.1.1).

Conservation interests supported the rangelands lease. In responses to the Discussion Paper, only two opposed the perpetual pastoral lease and two others considered it acceptable only if increased requirements to monitor and/ or improve rangeland condition were imposed. The perpetual pastoral lease was seen as a positive step where leases are already being managed on an ecologically sustainable basis, because it was likely to provide an incentive to increase investment. However, conservationists argued perpetual leases should be tied to a leaseholder commitment to improve the ecological condition of the lease over time.

Native title representative bodies initially expressed concern that the new options, particularly the perpetual pastoral lease, threaten the rights and interests of native title holders and claimants. However, most are now satisfied that the proposed tenure options will need to comply with the NTA.

The mining industry supported the intent of the reforms but was cautious about the rangelands lease. In particular, the reference to the rangelands lease being available for conservation purposes created concerns about access for future mining and exploration. The mining industry was informed that the rangelands lease will be the same as a pastoral lease in terms of its impact on mining access and exploration.

Tourism interest groups were supportive of the rangelands lease but expressed a view that there should be wider powers for third parties to be involved, with or without pastoralists to develop high-end tourist facilities.

Some of the feedback to date indicates that the following areas require further development:

- Process for granting a rangelands lease;
- Potential categories of use for a rangelands lease; and
- Requirements to plan and implement appropriate rangeland condition monitoring and rehabilitation.

The draft Bill will cover some, but not all of these concerns. Some will be dealt with via policy, while others may be set out in Regulations.

Another reform suggestion aimed at reducing red tape in the pastoral industry was to abolish Ministerial consent for the transfer of leases and approval of third party encumbrances. This suggestion was not considered practical, as the Minister needs to provide consent to ensure outgoing lessees have met any outstanding conditions and that new lessees have the capacity to operate a pastoral lease. The same principles would apply to a rangelands lease.

5.3 Additional consultation undertaken

Additional consultation has been undertaken as part the process of articulating the original seven Rangelands Reform legislative amendments, and in order to canvas more broadly the proposed changes to Part 7 of the LAA.

First, in September 2015, DoL convened a workshop of industry, community and environmental experts to provide independent (i.e. non-Government) advice on the scope of Rangelands Reform and potential governance arrangements to achieve development in the rangelands. The Rangelands Development Expert Advisory Group (RDEAG) met on 9 September 2015. The RDEAG acknowledged the need to address ecological degradation of the Rangelands, as well as noting the legacy of poor management outcomes in the Rangelands as a significant challenge. Security of tenure was highlighted as a priority, and the proposals in the Rangelands Reform and Part 7 amendments were acknowledged as advancing that priority's resolution.

Additionally, the RDEAG acknowledged the important role of pastoralists in the Rangelands, noting, however, that just over one third of that region is under pastoral lease. Additionally, the RDEAG noted that the Rangelands are a very diverse place, with conditions varying depending on geographical location, climate, and degree of isolation from major population centres. In order to unlock the potential of the Rangelands, new opportunities to diversify activities are required. This is particularly so in areas where the Rangelands have become degraded, such as the Southern Rangelands. One key element identified by the RDEAG was the need to engage better with native title holders and claimants, who must be a partner in any new activities in the Rangelands for them to succeed.

In respect of governance, the RDEAG acknowledged the PLB's contribution to management of the Rangelands, but suggested that a new statutory body responsible for a stronger focus on the strategic management of the Rangelands would be best. The RDEAG advocated for appointments to this body to be based on the expertise they bring to the group, rather than being representatives of a particular stakeholder interest. Further, members of the group should be independently selected, rather than being Ministerial appointees, in order to ensure greater transparency in the process.

DoL noted this feedback, and has incorporated elements relating to the strategic body into the draft Bill. The proposed new body's members would be selected based on expertise, rather than representation of a particular interest group. The importance of pastoralism in the Rangelands means that the Minister will certainly include two persons with expertise in pastoralism on the new body.

Second, DoL invited Western Australian Government agencies currently undertaking activity in the Rangelands, and those agencies with a potential interest or impact on the Rangelands, to be involved in the earliest stage of the current reform process. Feedback from those agencies has been favourable and DoL is working through agency responses in order to develop a comprehensive engagement plan.

Third, the Minister for Lands has discussed key elements of the proposals with leading stakeholders in the Rangelands, including Government agencies and Boards, Industry bodies, and interested individuals, seeking broad support for the reform agenda. Meetings between the Minister and stakeholders have been ongoing. The Minister has met with the Chair of the Pastoral Lands Board and representatives of the Pastoralists and Graziers Association of Western Australia, among others. As a corollary to this process, the Minister has appeared at events and in the media, articulating the proposed amendments and the significant opportunity they represent for the Rangelands and for the State as a whole.

Fourth, DoL has actively engaged with key stakeholders in support of the Minister's communications with stakeholders and the media, especially the PLB and the PGA in order to explain and garner support for the proposed reforms. DoL officers have spoken at the PGA's annual convention, regional meetings in the Pilbara and the Gascoyne, and presented to the PLB both in Perth and regional areas. DoL staff have also met with mining, conservation, and business groups as part of this process.

5.4 Next Stage of Consultation

DoL has released the draft of the *Land Administration Amendment Bill 2016* and this Consultation Paper for public comment. These documents will be available for comment for one month. The closing date for public submissions is 5 May 2016.

A series of stakeholder forums will be held across the regions during April 2016. At those forums DoL officers will outline the proposed amendments and answer any questions. DoL will communicate with stakeholders regularly via the use of fact sheets, stakeholder presentations, media releases, direct emails and information on the department's web site.

DoL has provided a submission guide that can be found on the DoL website www.lands.wa.gov.au. This document contains a series of guiding questions that reflect those included in this Consultation Paper. The guiding questions are intended to provoke open-ended responses from stakeholders, rather than simple yes-no answers.

Upon completion of the consultation period, a Decision Regulatory Impact Statement (D-RIS) will be produced, which will identify the outcomes of the consultation process, what changes have been made to the Bill as a result of that consultation, how feedback that was not incorporated into the final Bill was considered, and how stakeholders were informed about decisions made regarding the feedback. The D-RIS will accompany the final draft of the Bill to Cabinet, where DoL will seek Approval to Print the Bill for introduction into Parliament.



6. Preferred Option

6.1 Preferred Option

Option 3 is preferred, incorporating the series of legislative amendments listed in section 3.3 above. These options will be the most effective in diversifying the economic base of the Rangelands and improving security of investment in the long term. They also provide a range of alternative measures for both existing pastoral lessees and new entrants. For example, the rangelands lease is a tenure option that provides for flexibility of use, thus meeting one of the key objectives of the reform program. This will allow for a tenure option of considerable longevity from the point of view of both business and Government administration, because the activities that will be the subject of the lease may be nominated by the proponent within broad guidelines. This inherent flexibility allows the rangelands lease to be used for new purposes over time, which fosters and promotes innovation and an influx of new skills and industries.

6.2 Compliance Costs

The compliance costs to business will be most notable in terms of the cost of addressing native title issues. However, while upfront costs such as native title resolution may be regarded by some proponents as barriers to entry for some of these options, in the long term these costs will be recouped through the income generated by new investments. Therefore, these costs are reasonable when compared to the objectives of land tenure reform given that additional economic activity in the Rangelands will more than compensate for any additional costs.

The preferred options are not expected to create significant market or regulatory failure. They represent a mixed approach that aims to reduce the likelihood of regulatory failure. They create more robust and flexible arrangements that implement liberalising market reform. While the rangelands lease proposal may impact upon scale economies currently present and reduce the level of new investment in pastoral-specific infrastructure, these impacts may equally be offset by investment associated with the infrastructure and services needs of alternative activities conducted under a rangelands lease, which may in any case include pastoral activity as part of a mixed land use. The impacts of tenure reform on the pastoral industry will be monitored to determine whether any adverse outcomes arise.

6.3 Impact on and Co-existence with Other Regulation

These options have been investigated in terms of their impact on other legislation and consequential amendments have been drafted where required. DoL has worked with the relevant government agencies in drafting the consequential amendments. In terms of the administration and assessment of the new forms of tenure, DoL will establish or amend processes appropriately following consultation with relevant agencies and other stakeholders.



7. Implementation and Evaluation Strategy

7.1 Implementation

Implementation is expected to commence in 2016. At this stage, few regulations are expected to be required, other than for rangelands condition monitoring and the method for establishing the expert panel to provide the Minister with advice regarding rangeland condition matters. Finalisation of administration process and awareness raising activities would also need to be undertaken during late 2016 or early 2017.

The process for implementation and coordinated educational campaigns is expected to commence in 2016 or early 2017, with details to be released in due course.

As the take up of the new options is voluntary, implementation will depend on the rate of conversion of existing pastoral leases or UCL to other tenure options. Initially, take up is expected to be slow as proponents investigate and develop proposals and work their way through any compliance issues, such as native title and local government planning approval, if required, with uptake of the new tenure options beginning within 2-5 years.

7.2 Performance Indicators

The proposed performance indicators for the Rangelands Reform Program legislative changes are:

- Government administrative cost per land transfer action, e.g. transfer of pastoral to a rangelands lease.
- Level of economic activity and investment in the pastoral industry and allied diversified industries, for example, tourism and horticulture on pastoral leases as indicated by the physical output of these industries and value of production.
- Impact on regional society as indicated by the increase or decrease in rangelands population.
- Impact on non-pastoral industries as indicated by the numbers of different types of diversification activities.
- Impact on environmental condition of the Rangelands as indicated by improvement, if any, of the condition of vegetation on rangeland monitoring sites.

7.3 Baseline data / Information

Additional information is also likely to be collected on:

- Number of pastoral leases at the commencement of legislative change, including breakdown of lease ownership, i.e. family, corporate, mining, Indigenous, and conservation
- Number, area and term of rangelands leases
- Number and area of new diversification permits and other tenure changes
- The breakdown of types of purpose for rangelands leases
- Data comparing the average lease cost of rangelands and pastoral leases
- Data comparing the change in rangeland condition on rangelands leases and pastoral leases (may not be comparable for several or more years).
- Population trends in key Rangelands local governments.

7.4 Legislative Review

It is anticipated that the legislation will be reviewed 5 years after it is passed into law.

The review will be undertaken by the department responsible for administering the LAA at the time.



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Attachment 1

Rangelands Tenure Options

DISCUSSION PAPER

April 2011





Contents

1. Introduction.....	3
2. Background.....	4
2.1 Western Australian Rangelands	4
2.2 Objectives	4
2.3 Land Tenure Reform	5
3. Existing Forms of Tenure under the LAA.....	5
3.1 General Leases	5
3.2 Licences	6
3.3 Pastoral Leases	6
3.4 Role of the Pastoral Lands Board	7
3.5 LAA Permit Provisions	7
4. Options for Pastoral Tenure Reform.....	8
4.1 Perpetual Pastoral Lease	8
4.2 Rangelands Lease	8
4.2.1 Description.....	8
4.2.2 Features of a Rangelands Lease.....	9
4.3 New Permit Provision	14
Rangelands Lease Feedback:.....	15
Confidentiality and FOI.....	15
Rangelands Reform Program.....	15

1. Introduction

The Rangelands Reform Program is a three-year program of specific action developed to address issues highlighted in recent reviews and to tackle ongoing challenges faced by the pastoral industries in the rangelands. With the Department of Regional Development and Lands (RDL) as the lead agency this program will bring together agencies with a significant 'footprint' in the rangelands to create a shared commitment and an integrated approach to rangelands reform (see project organisation chart at Attachment 1).

Some of the State's pastoral areas have long been beset by periods of adverse climatic conditions. These conditions exacerbate long term underlying problems confronting the pastoral industry. The Liberal – National Government acknowledges that the necessary reforms being proposed under the Rangelands Reform Program, having been pre-empted through many previous reviews, are long overdue. This program aims to implement them.

The Program will promote the growth of sustainable, economically diverse rangelands communities through land tenure reform, encouragement of new investment opportunities and land uses, and the identification of measures to restore the rangelands' productive capacity and conservation values; and in the process realise the economic potential of the rangelands for the State.

The Program was jointly announced on 13 December 2010 by the Minister for Regional Development; Lands and Minister for Agriculture and Food. The announcement emphasised the aim to find ways to give pastoralists more flexibility and freedom in how they could earn a living, encouraging investment in the industry, and enhancing earning capacity and business expansion.

The Liberal - National Government is investing \$2.25 million of Royalties for Regions funds to support a project team to implement the reform agenda, underlining the Government's commitment to develop improved economic opportunities for the long term.

To ensure a state-wide approach is taken to designing and implementing diversification and economic initiatives in the rangelands, government and non-government consultation and feedback on proposals are important. RDL has released this policy discussion paper to help explain the concept of the proposed new tenure options, but principally, the concept of a rangelands lease, which if adopted, will create another form of Crown tenure within the *Land Administration Act 1997* (LAA).

The proposed land tenure options will not necessarily impact on existing pastoral lease activities. The option of rolling over an existing pastoral lease will continue to be available as planned in relation to the renewal of active pastoral leases in 2015. Rather, it is intended that the alternative tenure options be available for pastoralists and others to take up should they wish, based on their own decisions about the individual needs and circumstances of their business.

Rangelands stakeholders are encouraged to provide feedback on the rangelands lease and other proposed forms of tenure. Feedback must be submitted by **5pm WST Wednesday, 11 May 2011**. See page 18 for further details.



2. Background

2.1 Western Australian Rangelands

The Western Australian rangelands occupy 87 percent of the State's landmass and include all but the South West agricultural areas. This land comprises of 38 percent Pastoral leases - used for grazing of livestock on native vegetation; and 62 percent Unallocated Crown Lands (UCL) and lands vested for conservation and Indigenous purposes.

There are 460 pastoral stations consisting of 518 leases (some stations contain more than one lease) and in 2008-09, the value of pastoral production was estimated at around \$240 million, comprising:

- \$180 million in cattle sales;
- \$34 million in wool production;
- \$14 million in sheep sales; and
- \$12 million in goat sales.

The impetus for a Rangelands Reform Program for the Western Australian pastoral industry arose from two reviews into the pastoral industry in 2009. These reviews, initiated by the Minister for Agriculture and Food, were the Southern Rangelands Pastoral Advisory Group's A Review of the Economic and Ecological Sustainability of Pastoralism in the Southern Rangelands of Western Australia, chaired by the Hon Wendy Duncan MLC, and A Review of the Process to Permit Diversification on Pastoral Leasehold Land in Western Australia. (Both of the review's final reports can be accessed on the RDL website: www.lands.rdl.wa.gov.au/19999.asp)

It is clear from these reviews, and others conducted as long ago as the 1979 Jennings review, that similar ongoing issues persist, mainly:

- that the sustainability and capacity of the pastoral industry in many areas of the rangelands, the dominant industry in terms of land area, is increasingly under threat from the depleted condition of the resource and declining terms of trade for some commodities; and
- that the potential exists to increase investment in the rangelands through enabling improved access to diversification options and improved security of tenure.

While these pathways for diversification exist, there is much the Government can do in this proposed reform program to streamline them and formalise them into a more efficient system that imposes less transactional costs on industry.

2.2 Objectives

The objectives of the Rangelands Reform Program are to:

- develop a contemporary vision for the rangelands which promotes multiple land uses, economically diverse communities and a responsive, future-oriented business environment;
- develop proposals for new forms of land tenure, including options of perpetual pastoral leasehold and 'rangelands leases', to replace or supplement existing pastoral tenure and provide current and future landholders with greater flexibility, security and incentive to invest;
- facilitate use of the rangelands for conservation purposes, including enabling management of parts or whole of leases for conservation, consistent with conservation outcomes;
- streamline government processes and procedures that affect new business development in the rangelands, including the development of a 'one stop shop' facility for pastoral lease diversification applications and approvals;
- remove unintended planning and regulatory obstacles to the creation of development precincts in the rangelands; encourage private sector investment in such precincts through links to economic development initiatives such as DAFWA's "Growing the North";
- identify region-specific economic development opportunities or adjustment responses to arrest the losses associated with the ongoing degradation of formerly productive land and water assets and/or the failure of businesses that are not well adapted to contemporary market conditions.

2.3 Land Tenure Reform

The most urgent of these objectives and the first priority for the Rangelands Reform team is to develop drafting instructions for the new forms of land tenure, which will involve amendments to the LAA.

The new forms of land tenure being considered are to be alternative options to existing pastoral leasehold and include:

- a 'rangelands lease' allowing for a diverse range of permitted uses, including conservation and tourism (this paper addresses the rangelands lease specifically in Section 4.2)
- perpetual pastoral lease under existing pastoral framework (advice is currently being sought from the State Solicitor's Office regarding the impact of native title – dealt with in Section 4.1 generally); and
- broader diversification activities permitted for existing pastoral leases and/or perpetual pastoral leases (Section 4.3).

The tenure options may be able to be taken up by existing pastoral lessees, new investors and/or for joint investment, depending on the individual circumstances. Any new tenure option will also take account of the unique status and circumstances of native title holders and claimants and the indigenous community generally. Consideration will also need to be given to the governance structure applying to the administration and enforcement of these forms of tenure.

The Rangelands Reform Program is being conducted in addition to the work currently being undertaken by RDL for the renewal of pastoral leases in 2015. The 2015 process will continue in parallel with Rangelands Reform and not be affected by it. In addition, the timing of renewing pastoral leases will not be affected by the Rangelands Reform Program.

There may be other options in relation to land tenure reform that could be considered. RDL is open to receiving feedback regarding alternative tenure options in general, whether or not they are addressed in this discussion paper.

3. Existing Forms of Tenure under the LAA

To give some context to the proposed tenure reforms the following section 3 outlines the existing tenure options available under the LAA.

3.1 General Leases

Provisions under the LAA allow the Minister to grant various forms of tenure including:

- freehold
- section 75 conditional tenure freehold (freehold for specified purposes)
- section 79 lease for any purpose
- section 83 lease or freehold for the benefit of Aboriginal persons
- section 80 conditional purchase lease – lease with right to purchase provided certain conditions met
- other options to purchase or lease.

The relevant features of these forms of tenure are:

- use of the land for any purpose permitted
- a right to exclusive possession - only the tenant/landholder is entitled to occupy the land
- payment of rent, rates and taxes based on the use/value of the land (commercial or otherwise).

The process of granting any of these forms of tenure involves notice, clearance, referral and comment from other agencies such as the Department of Mines and Petroleum (DMP), Department of Environment and Conservation (DEC), Local Government Authorities and others in particular circumstances.

Native title will either have been extinguished in relation to the land under these general leases and other forms of tenure by a previous grant of tenure, or an Indigenous Land Use Agreement (ILUA) negotiated. Alternatively, the land may be compulsorily acquired and native title extinguished. This will be a precondition to the grant of tenure. An ILUA can also be negotiated to provide for native title not to be extinguished but this has not been usual for the above types of tenure.

3.2 Licences

The Minister may also grant a licence under section 91 LAA in respect of crown land for any purpose. A licence is a contractual right and not an interest in land or form of land tenure. It does not give exclusive possession. Clearances, notices and referral to other agencies may occur as with a lease, depending on the purpose of the licence. If the activity to be conducted under the licence is low impact within the meaning of Subdivision L of the *Native Title Act 1993* (Cth) (NTA) and native title has not been determined it may be a valid future act. If the licence is to do anything other than a low impact activity and native title rights and interests are affected then an ILUA will need to be entered into as a precondition to grant of the licence.

3.3 Pastoral Leases

Part 7 of the LAA provides comprehensive provisions which deal with Pastoral Leases. Part 7 sets out most of the terms and conditions of the relationship between the pastoralist lessee and the Minister for Lands. There is also a short lease document called a pastoral lease which sets out various additional terms and conditions.

The relevant features of a pastoral lease are:

- it does not grant exclusive possession (others may have access provided they do not interfere with pastoral purpose)
- is for a term of up to 50 years (current leases range between 18 and 50 years)
- it can only be for pastoral purposes as defined in s93 LAA as follows:
 - commercial grazing of authorised stock
 - agricultural, horticultural or other supplementary uses of land inseparable from, essential to, or normally carried out in conjunction with the grazing of stock including production of stock feed; and
 - activities ancillary to the above

- the land may not be used for purposes other than pastoral purposes and a pastoralist may not sell any product of a non pastoral use of the land except in accordance with a permit issued under Division 5 of Part 7 (s106 LAA)
- rent is based on a range of pastoral and market factors to develop an unimproved value of the lease and is reassessed every five years by the Valuer General, with input concerning the economic state of the pastoral industry from the Pastoral Lands Board (PLB)
- pastoral leases are exempt from land tax and subject to rates (local government and Agriculture Protection Board) based on the rent set under the LAA
- it does not extinguish native title - the rights of a pastoralist under a pastoral lease prevail over but do not extinguish native title - native title rights and the rights of pastoralists co-exist in relation to the land
- section 104 provides Aboriginal persons a right to enter upon any unenclosed or unimproved parts of the land under a pastoral lease to seek sustenance in their accustomed manner
- existing pastoral leases are to be renewed for the same term on 30 June 2015 (except for a few where exclusions apply).

Pastoral Lessees are required to:

- abide by lease conditions
- manage the land in an environmentally sustainable manner
- maintain indigenous pasture and other vegetation on the land, to the satisfaction of the PLB
- maintain improvements, to the satisfaction of the PLB
- comply with set numbers and distribution of authorised animal stock, if determined by the PLB
- control certain animals and plants in compliance with *Agriculture and Related Resources Protection Act 1976* (weeds and feral animal control)
- provide the PLB with an annual return with any information required by the Board.



3.4 Role of the Pastoral Lands Board

The LAA establishes that pastoral leases are administered by the PLB. The principal functions of the PLB are set out in s95 LAA and include:

- administration of pastoral leases
- advising the Minister on policy relating to the pastoral industry
- developing policies to protect the rangelands from degradation
- developing policies to rehabilitate degraded or eroded rangelands and to restore their pastoral potential
- consideration of applications for the subdivision of pastoral land and make recommendations to the Minister in relation to them
- establishing and evaluating a system of land monitoring sites
- monitoring the numbers and effect of stock and feral animals on pastoral land
- conducting or commissioning research into any matters that it considers are relevant to the pastoral industry.

The PLB is supported by the Pastoral Land unit in RDL. The Department of Agriculture and Food (DAFWA) also provides advice and technical support. DAFWA officers carry out inspections on behalf of the PLB and categorise leases based on land resource and/or infrastructure issues. The categories determine the inspection cycle of leases.



3.5 LAA Permit Provisions

Section 106 of the LAA provides that a pastoral lessee may not use land under a pastoral lease for any other purpose except in accordance with a permit issued under Division 5 of Part 7 of the LAA. The current permit provisions of Part 7 (issued by the PLB) provide for a range of activities consistent with or related to pastoral purposes:

- to clear land – s118
- to sow non indigenous pasture - s119
- for agricultural use for crop or fodder; horticultural use, provided the purpose is reasonably related to pastoral use of the land under a lease – s120
- for use of land under a lease for tourism supplementary to pastoral purposes - s121
- for non pastoral use of enclosed or improved land – s122
- to keep or sell prohibited stock - s122A.

The application for a permit process involves clearance and/or comment from a range of agencies; DEC, DAFWA, Department of Water and DMP being the primary ones. In addition to departmental practice, section 117 of the LAA requires other Acts to be complied with before a permit can issue.

If the granting of a permit will affect native title rights and interests the future act provisions of the NTA may be triggered. Generally, permits for pastoral purposes under sections 119, 120, 121 and 122A are permitted under Subdivision G of the NTA with lesser procedural rights, as under s24GB of the NTA these activities will not entail a future act. Non-pastoral activity under section 122 LAA, however, triggers more onerous native title future act provisions under the NTA. Where it is considered that a proposed permit activity has an impact on native title an ILUA will need to be negotiated in relation to the permit activity.

Other features of the permit system are:

- As current diversification permits are only provided for activities consistent with pastoral tenure under the LAA they are limited in their application.
- Where a permit is not available for the activity contemplated, alternative tenure is available to pastoralists and third parties under other provisions of the LAA. For example, a section 79 lease of a specified area for a particular non-pastoral activity. The land would need to be excised from the pastoral lease, rent set based on the use, and an ILUA negotiated (preferably) or the land compulsorily acquired and native title extinguished.

4. Options for Pastoral Tenure Reform

4.1 Perpetual Pastoral Lease

It is proposed to amend the LAA to allow pastoral lessees to apply for a pastoral lease for a perpetual term but otherwise subject to all the provisions of Part 7 LAA applicable to pastoral leases generally. It is intended the legislation will have a specific provision providing that the perpetual pastoral lease does not extinguish native title. An applicant for a perpetual pastoral lease would need to complete the future act process under the NTA before the lease is granted, i.e. negotiate with relevant native title parties through an ILUA process.

RDL is currently seeking legal advice on this proposal and whether a Perpetual Pastoral Lease can be issued without extinguishing native title.

4.2 Rangelands Lease

4.2.1 Description

It is proposed that legislative amendments to the LAA provide for a new form of tenure to be known as a “rangelands lease”, which will allow for multiple and varied uses of the rangelands, provided that use is broad scale and consistent with the preservation and ongoing management of the rangelands as a resource.

The “rangelands” includes pastoral leases but also includes reserves and unallocated Crown land outside the pastoral estate, and comprises approximately 87% of the state. This proposal will not apply to Crown reserves (for conservation or other purposes).

Currently private conservation groups, mining companies and others have only been able to acquire tenure over large rangelands areas under a pastoral lease which requires them to undertake pastoral activities and carries obligations in relation to stock numbers and pastoral activities generally. This may not be appropriate for their intended use of the land.

In addition, pastoralists seeking to diversify into areas other than pastoral activities have only been able to do so to a limited extent by applying for a permit under section 106 LAA in respect of the matters set out in sections 118 to 122 LAA.

A rangelands lease will provide an alternative form of tenure for any appropriate land use or combination of uses consistent with the broad scale use and preservation of the rangelands resource.

The permitted uses will be specified in the lease itself and the use will determine the rent payable and specific conditions, which will be set out in the lease. There will also be minimum conditions applicable to all rangelands leases set out in the legislation in relation to fire prevention and management, land management and biosecurity measures.

Some examples of possible permitted uses would include:

- a rangelands lease solely for conservation purposes in favour of a private conservation group
- a rangelands lease for indigenous uses in favour of Aboriginal groups, or
- a rangelands lease for multiple uses such as pastoral use, horticulture, agriculture, tourism (broad acre, remote, low value – such as looking at land features), carbon sequestration, mining companies, lifestyle.

The grant of a rangelands lease will be subject to the usual approvals, comment and referrals process from DMP, DEC, Local Government Authorities and affected agencies in the particular circumstances. As a general principle other legislation will apply to a rangelands lease in a similar manner as the legislation applies to a pastoral lease – for example interaction with the *Mining Act 1978*, *Rights in Water and Irrigation Act 1914*.

The grant of a rangelands lease will also be subject to overriding Crown land tenure allocation policy, which requires appropriate tenure for the proposed use. Where an intensive or high value use is proposed as part of a rangelands lease proposal then an alternative form of tenure may be utilised such as freehold, conditional purchase lease (s80 LAA), or a general s79 LAA exclusive possession lease.

In addition the appropriate future act process will need to be completed under the NTA before a rangelands lease is granted.

As much as possible there should be consistency between those aspects of a rangelands lease that are also requirements of a pastoral lease, such as land condition requirements. This is to provide equity between lessees and ease the administrative burden for government, thereby reducing costs. To ensure consistency, changes to the provisions of Part 7 LAA in relation to pastoral leases may be required where appropriate.

4.2.2 Features of a Rangelands Lease

(i) No Exclusive Possession

The lessee of a rangelands lease will have a right to quiet possession for the permitted purposes specified in the lease but will not have a right to exclusive possession. The non extinguishment principle under the NTA will apply - a rangelands lease will not extinguish native title. A provision to this effect will be included in the legislation.

The lessee of a rangelands lease will have the right to uninterrupted use for the purposes of the lease but others may be granted access provided that access does not interfere with the permitted purposes under the lease. For example, access by others for an unrelated purpose under a section 91 LAA licence (e.g. for a feasibility study for a resource development project).

As the specific purposes for which a lease is granted will be set out in the lease conditions a change in use will require a variation to the lease. This may also require a further future act process to be completed before the variation can proceed.

This is consistent with the position under pastoral leases and appropriate given the broad scale nature and size of such leases. The legislation will specify that native title is not extinguished. State Solicitor's Office advice will be obtained to confirm a non exclusive rangelands lease will not extinguish native title.

An issue which has arisen in discussions is how a permitted purpose that is conservation is reconciled with others having access. The issue of the coexistence of competing uses will be managed through the approvals and referrals process, discussion with lessees and the imposition of conditions in the lease.

(ii) Term

A rangelands lease will be for a fixed term which will be set by the Minister. The Lease may include a right of renewal on such terms and conditions as the Minister thinks fit.

It is proposed that there is no specified upper limit or lower limit on the term of the lease. Originally a maximum term of 50 years was considered. However, as some potential uses for a rangelands lease may require longer than usual terms the term needs to be at the Minister's discretion. For example, a lease for carbon sequestration would have 100 year maintenance obligations under the proposed Commonwealth Government Carbon Farming Initiative legislation. Also leases for Indigenous purposes or private conservation may be appropriate situations for long term leases. A perpetual term is not considered appropriate given the wide range of possible potential uses for a rangelands lease, possible multiple uses under the one lease and possible native title consequences. Short terms are also not considered appropriate given the intended broad scale use.

The right to renew is to be specified in the lease itself. A lessee will have a right to renew subject to complying with lease and LAA provisions. This gives lessees certainty of security, unlike the situation with pastoral leases where the Minister has discretion to renew under section 140 LAA. A right of renewal in the lease is consistent with other leases under Part 6 LAA and commercial leases generally.



(iii) Area of rangelands lease and pastoral lease

The maximum area of a rangelands lease will be 1,500,000 hectares. The maximum area of a pastoral lease under section 136 LAA should be amended from 500,000 hectares to 1,500,000 hectares so that there is consistency between the two forms of tenure.

The Minister will have the discretion to approve a transfer of a pastoral or rangelands lease to any person where the 1,500,000 hectare limitation will be exceeded if the resulting concentration of control of land is not against the public interest. The 1,500,000 hectare limitation will apply to:

- the combined area of pastoral leases;
- the combined area of rangeland leases; and
- the combined area of pastoral and rangelands leases.

The imputation provisions in section 136(2) LAA in relation to companies and section 136(3) LAA in relation to trusts will apply to a rangelands lease.

Experience has indicated that 500,000 hectares is too small an area in the modern operating environment. Pastoralists often require a larger area and seek to purchase adjoining pastoral leases. The requirement for the Minister to consider the public interest issue causes operational issues and delay. The limitation should also apply to the combined area of a pastoral and rangelands lease so that there is not a concentration of control of the State's rangelands utilising the two different forms of tenure.

(iv) Rent

The Rent payable under a rangelands lease will be determined by the Minister based on the permitted uses under the lease, even if one of those permitted uses is a pastoral use.

Rent will be set by the Minister who takes advice from the Valuer General. This is the situation with leases and other interests granted under the LAA (other than pastoral leases). Where a rangelands lease includes pastoral use as one of the permitted uses under the lease the assessment of rent provisions in section 123 LAA applicable to pastoral leases will not apply and the PLB will not have input into determining rent by the provision of information as to the economic state of the industry. Pastoral use will be taken into account generally in assessment of the rent payable along with the other uses under the lease.

As a rangelands lease has the potential to be utilised for a variety of uses, future uses yet unknown and multiple use, it is different in character to a pastoral lease and rent should be determined based on those uses.

(v) Review of Rent

Rent under a rangelands lease will be reviewed on the dates set out in the lease and in the manner set out in the lease.

A rangelands lease can be for a variety of purposes or multiple uses so rent review provisions should be at the Minister's discretion based on the uses under the lease. As with other lease tenure under the LAA the rent would be reviewed in consultation with the Valuer General at 3-5 yearly intervals. This is consistent with pastoral leases which are reviewed every 5 years but allows for flexibility consistent with the uses under a lease.



(vi) Waiver of Rent

The Minister is to have the discretion to waive, postpone or reduce rent payable under a rangelands lease in the event of drought, cyclone, flood or other disaster as with pastoral leases under section 128 LAA. The application for relief is to be made to the Minister (not PLB). There will also be included a further category of “industry hardship”.

Where a rangelands lease is used in part for pastoral purposes then the lessee may still need to be able to apply for rent relief for poor industry conditions to the extent the lease is used for pastoral activity, so that there is equity with pastoral leases. The decision to grant relief will be made by the Minister.

The provision to apply to the PLB for relief as a result of poor economic conditions in the pastoral industry will not apply. A more general industry hardship provision will be incorporated to provide equity with pastoral leases and provide discretion for the Minister to grant rent relief for industry hardship in particular circumstances across a range of potential uses under a rangelands lease.

As the Minister sets the rent he would have the ability to vary it as with any general lease under Part 6 LAA. However, it is considered appropriate to incorporate a specific waiver of rent condition to recognise the nature of the lease activities relying on the broadacre rangelands resource.

(vii) Reservation in favour of Aboriginal Persons

The reservation in favour of Aboriginal persons allowing entry onto unenclosed and unimproved parts of a lease to seek sustenance in their accustomed manner in section 104 LAA will also apply to a rangelands lease.

There should be consistency between a pastoral lease and rangelands lease as both provide for non exclusive possession and involve the State's rangelands, an area where Aboriginal persons reside and may seek sustenance.

(viii) Default

An express default provision similar to that in relation to pastoral leases in section 129 LAA is required in the legislation to provide that a lessee of a rangelands lease will be in default if the lessee fails to comply with:

- any provision of the lease;
- any provision of the LAA;
- a soil conservation notice; or
- a direction of the Minister in relation to rangeland condition monitoring, stock numbers or improvements.

The Minister will issue notices of default.

The legislation should specify what the default notice should contain, similar to the provisions for pastoral leases under section 129(2) LAA. References to complying with directives of the PLB will be replaced with complying with directives of the Minister.

The legislation will provide that it is an offence not to comply with a notice of default under a rangelands lease and include a penalty for non-compliance as for pastoral leases under section 130 LAA.

The penalty amount for non-compliance with a notice of default should be the same as for pastoral leases under section 130 LAA – \$50,000 and a daily penalty of \$1,000.

Where possible, there should be consistency in relation to rangeland condition monitoring issues between rangelands and pastoral leases and defaults in relation to land.



(ix) Forfeiture

The rangelands lease will be liable to forfeiture under section 35 LAA similar to other leases under the LAA and pastoral leases under section 131 LAA. The Minister may issue a forfeiture notice if the lessee of a rangelands lease has failed to comply with a provision of the lease, a provision of the LAA or a direction of the Minister.

(x) Appeal

A lessee under a rangelands lease will have a right to appeal to the Governor against forfeiture under section 35 LAA and Part 3 LAA consistent with other interest holders under the LAA.

(xi) Abandonment

Similar provisions to the provisions in section 133 LAA dealing with abandonment of a pastoral lease will also apply to a rangelands lease but excluding references to the PLB. The Minister will make determinations and exercise powers in relation to abandoned leases. The Minister may authorise an officer or agent to enter onto land in the event of abandonment.

Potentially there is no need for this provision as the Minister may simply terminate a lease in the event it is abandoned under the terms of the lease. However, the provision will be retained with the ability to appoint an agent; as given the wide range of potential uses under a rangelands lease, management of abandoned properties may be required in particular circumstances (particularly if one of the uses is pastoral).

(xii) Transfer

The Minister's approval is required for any transfer of a rangelands lease or interest in a rangelands lease or share in any company lessee of a rangelands lease. Sections 134(1), (2), (3), (6), (7) LAA and section 135 LAA dealing with transfer and what constitutes a transfer will apply to a rangelands lease.

The Minister may refuse to approve a transfer if an annual return is not lodged - see further item 4.2.2(xv) below.

This will be consistent with more detailed provisions in relation to transfer of pastoral leases or interests under the LAA. These provisions are more extensive than the consent to transfer provision under section 18 LAA and more appropriate for large land areas under a rangeland lease.

(xiii) Compulsory Acquisition

Land in a rangelands lease may be compulsorily acquired by the State under Parts 9 and 10 of the LAA. The provisions in section 143 of the LAA which allow the Minister to exclude land from a pastoral lease for public purposes as part of the renewal process will not apply to a rangelands lease as this was limited to the 2015 renewal of pastoral leases only. This is consistent with other forms of tenure under LAA.

(xiv) Ability to tie to other tenure

There is a need to provide a legislative basis to enable a rangelands lease (and other Crown land interests) to be tied to other tenures, so that one cannot be transferred without the other.

In some situations for financial reasons a more secure form of tenure may be required for part of a project involving a rangelands lease or pastoral lease. For land on which infrastructure requiring significant investment is to be built, freehold tenure or a section 79 lease which gives exclusive possession may be required.

Provision will be made in the legislation to allow for freehold, section 79 leasehold, or other tenure to be tied to the associated rangelands lease or pastoral lease so that they can only be transferred together. Any attempt to transfer the tied tenure independently of each other would be void. Provision will also be made for tenure to be untied at the Minister's discretion to accommodate future change.

In some cases the pastoral lease homestead or other infrastructure on that other tenure may be integral to the operations on the rangelands lease or pastoral lease, which would become moribund without access to it. In other cases the activities on the other tenure and the rangelands lease or pastoral lease may not be viable as separate stand alone operations but may provide greater sustainability or viability in conjunction with each other.



(xv) Annual Return

A lessee of a rangelands lease will be required to submit an annual return in an approved form in relation to the following information:

- Information on rangeland condition, management and assessment and an assessment of any change in land condition
- If one of the permitted uses is pastoral use, the stock numbers on the return date and details of any improvements effected in the last 12 months
- Any other information required by the Minister in relation to the land under the lease or permitted uses under the lease.

This is consistent with information pastoral lessees need to provide currently and for future self monitoring in relation to rangeland condition.

(xvi) Minimum Land Management Conditions

The following conditions will be applicable to all rangelands leases irrespective of the proposed use and will be set out in the LAA:

- a) A requirement for the lessee to prevent or minimise the risk of fire in accordance with the *Bushfires Act 1954 and Local Government Act 1995*.
- b) A requirement for the lessee to control declared plants and declared animals under the *Agriculture and Related Resources Act 1976*, and in the future, declared pests and prohibited organisms under the *Biosecurity and Agriculture Management Act 2007*.
- c) A requirement for the lessee to maintain the condition of the rangelands (in accordance with item 4.2.2(xvii) below).
- d) A general requirement to comply with all other laws.

Any other conditions specific to the nature of the use will be included in the lease itself.

(xvii) Rangelands Condition Monitoring

Ideally, any rangeland condition monitoring (RCM) arrangements should apply consistently to both pastoral and rangelands leases and be dealt with administratively under the same system. However, given time constraints the required amendments to effect:

- changes to existing provisions in relation to RCM of pastoral leases to encompass rangelands leases; and
- changes to the composition and functions of the PLB or the creation or consideration of an alternative body to undertake RCM in relation to broader land uses and interests (conservation, mining, tourism)

will need to occur as a second stage of the reform process.

Initially, the PLB will continue the RCM function in relation to pastoral leases and the Minister will be responsible for the RCM function in relation to rangelands leases, with advice from DAFWA, the PLB or any other expert body.

The legislation will set out in general terms an overarching obligation in relation to rangeland condition. A lessee of a rangelands lease is required to manage the land on an ecologically sustainable basis and take all measures to prevent or mitigate the effects of land degradation. Land degradation¹ will have the same meaning as in the *Soil and Land Conservation Act 1945*.

The Lessee will be required to monitor, assess and report on rangeland condition in accordance with requirements set by the Minister from time to time which may be:

- guidelines published in the Government Gazette for all or classes of leases (for example leases in a particular part of the state)
- in the lease itself.

¹ Land degradation includes-

- a) soil erosion, salinity, eutrophication and flooding; and;
- b) the removal or deterioration of natural or introduced vegetation, that may be detrimental to the present or future use of the land.

To the extent of any inconsistency the lease provisions will prevail so that particular uses or land requirements can be accommodated.

The Minister will be able to vary the lease provisions in relation to rangeland condition monitoring, assessment and reporting from time to time without the lessee's consent.

The Minister will be able to issue directions in relation to any measures the lessee is required to undertake to comply with rangeland condition requirements, including in relation to stock and in relation to carrying out improvements on a lease.

Enforcement action in relation to rangeland condition will be by the Minister.

The Minister may take advice from the PLB, DAFWA or any other person or body in relation to all aspects of RCM - rangeland condition, standards, monitoring, prevention, mitigation, auditing and self assessment matters. The Minister will also be able to establish an expert panel in relation to such matters under section 73 LAA or a similar power.

There will also be rangeland reporting requirements. The lessee will be required to provide information by annual return set out in item 4.2.2 (xv) above.

4.3 New Permit Provision

It is also proposed to add a new separate permit provision to Part 7 LAA for appropriate "primary production activities" as defined in the NTA. An applicant for a permit would need to complete the future act process under the NTA before the permit is granted.

Primary Production Activities in the NTA has its ordinary meaning and is also defined as including:

- cultivating land;
- maintaining, breeding or agisting animals;
- taking or catching fish or shellfish;
- forest operations;
- horticultural activities;
- aquaculture activities; and
- leaving fallow or destocking any land in connection with the doing of any thing that is a primary production activity.

It is intended the new permit provision will allow for a broader range of activities than currently permissible under the existing LAA permit provisions and definition of "pastoral purposes".



Feedback

Feedback on this paper must be received by **5.00pm WST Wednesday, 11 May 2011** to be accepted.

Feedback can be emailed to: rangelandsreform@rdl.wa.gov.au or posted to:

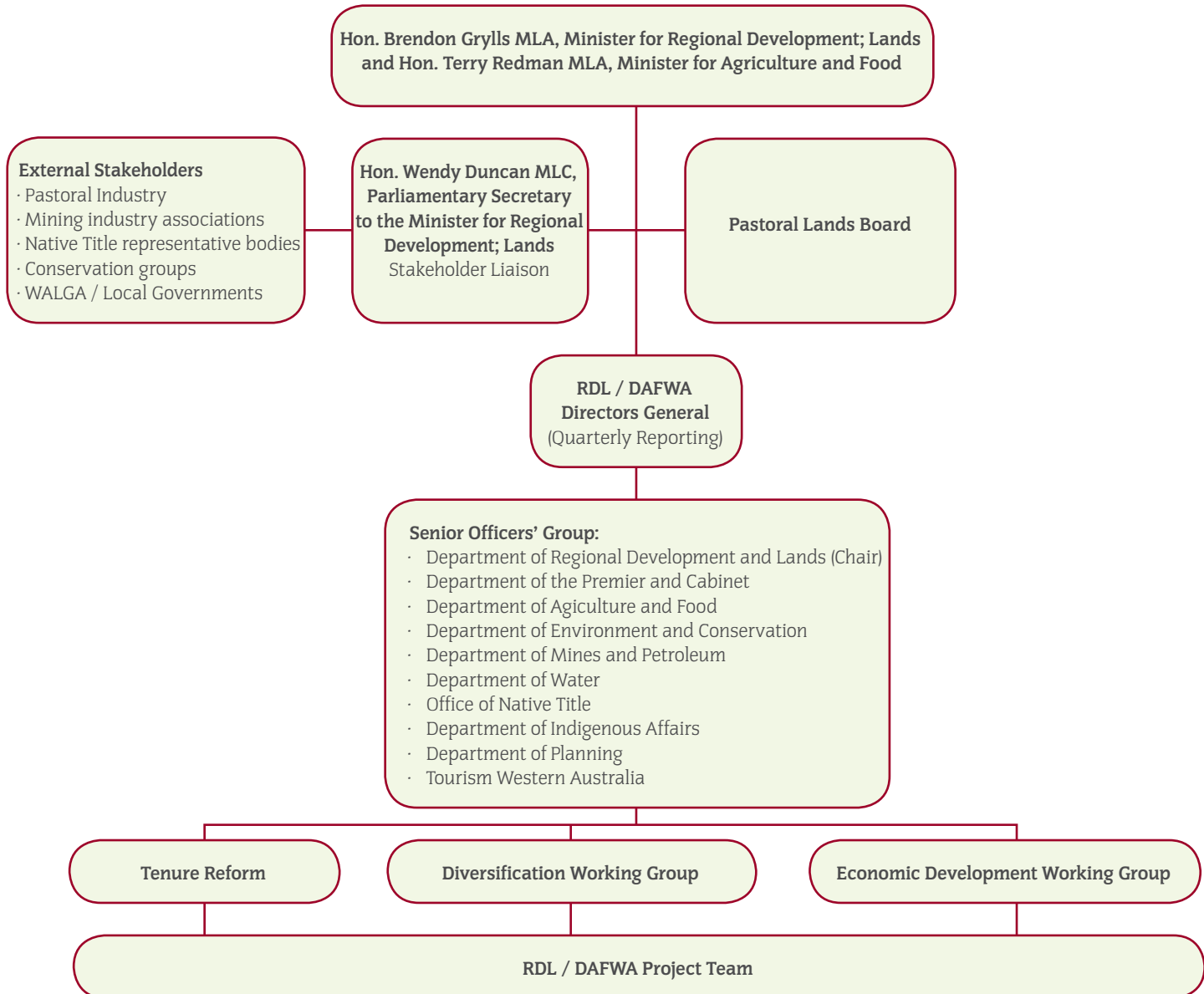
Rangelands Reform Program
 Department of Regional Development and Lands
 PO Box 1143
 WEST PERTH WA 6872

For more information contact Steve May, on (08) 9217 1463, or Geoff Comben, on (08) 9217 1462, or free call: 1800 620 511 (country only).

Confidentiality and FOI

Your feedback will be collated and may be made publically available – please mark it ‘CONFIDENTIAL’ if you do not want your feedback made public. The requirements under the *Freedom of Information Act 1992* will apply.

Rangelands Reform Program





Department of Regional Development and Lands

Visit: www.rdl.wa.gov.au

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Attachment 2

Summary of Response to the Rangelands Tenure Options

RESPONSE PAPER

September 2011





Contents

Purpose.....	3
Background.....	4
Overview of Responses.....	5
Key Issues Raised and Government Response.....	6

Purpose

In April 2011 the Department of Regional Development and Lands (RDL) released a Rangelands Tenure Options Discussion Paper. This subsequent paper responds to the issues raised in submissions to the discussion paper and outlines the next steps that the Government will undertake.

Summary of Proposed Government Action

In light of the feedback received, legal advice and policy considerations, RDL will prepare drafting instructions to implement the following changes to the *Land Administration Act 1997* (LAA):

- a. The addition to the LAA of a rangelands lease, with proposals to be developed to assist potential applicants address the native title process;
- b. The addition to the LAA of a pastoral lease for a perpetual term, with proposals to be developed to assist potential applicants address the native title process;
- c. Changes to the renewal of pastoral lease provisions to provide the right to the lessee to have a pastoral lease renewed for the same term provided no breach of lease, LAA or rangeland condition monitoring requirements;
- d. A new separate permit provision for some of the broader “primary production activities” specified in *the Native Title Act 1993 (Cth)* (NTA);
- e. Possible options to facilitate conversion of variable term leases post 2015 to a standard 50-year pastoral lease; and
- f. To allow under the LAA the transfer of diversification permits to an incoming lessee.

A draft bill will be released for consideration prior to the legislation being finalised and introduced to Parliament in 2012.



Background

The Rangelands Reform Program is a three-year program of specific action developed to address issues highlighted in recent reviews and deal with ongoing challenges faced by the pastoral industries in the rangelands.

The Program proposes to:

- amend the LAA to create alternative tenure options and a new permit provision to allow for a more diverse range of activities to be carried out on the rangelands and address issues of security of tenure;
- investigate and develop new economic opportunities in the rangelands; and
- create a 'one-stop-shop' approach to assessing pastoral diversification applications and investigate options to streamline the diversification permit process.

RDL released a Land Tenure Options Discussion Paper in April 2011 to help explain the concept of the proposed new tenure options; a perpetual pastoral lease, a rangelands lease and a new permit provision. Stakeholders were encouraged to provide feedback on the proposals by 20 May 2011.

The amendments to the LAA proposed in the Rangelands Tenure Options Discussion Paper were to institute the following tenure options:

1. The rangelands lease is intended to allow for multiple and varied uses of the rangelands, provided that the use is broad scale and consistent with the preservation and ongoing management of the rangelands as a resource. Thus, a rangelands lease will provide an alternative form of tenure for any appropriate land use or combination of uses consistent with the broad scale use and preservation of the rangelands resource. Examples of possible permitted uses under a rangelands lease include conservation, Indigenous use, or combinations of multiple uses, including pastoral, horticulture, agriculture, low intensity/impact tourism, carbon sequestration, mining companies or lifestyle. Given the potential for multiple uses under a rangelands lease there may be higher rent costs to be considered.
2. The perpetual pastoral lease is proposed as a new option for pastoral lessees who may apply for a lease with a perpetual term. All other requirements and administrative responsibilities under the LAA would apply and be the same as for a term pastoral lease. In the Rangelands Tenure Options Discussion Paper it was suggested that the legislation would have a specific provision providing that the perpetual pastoral lease does not extinguish native title. It is no longer proposed to have this provision. However, an applicant for a perpetual pastoral lease would still need to complete the future act process.
3. A new permit provision under the LAA for appropriate "primary production activities" as defined in the NTA. This will allow for a broader range of activities than is currently permissible under the LAA. Applicants for these permits would need to complete the NTA future act process.



Overview Of Responses

There were 73 feedback submissions received in response to the Rangelands Tenure Options Discussion Paper, with 42 being from individual pastoralists.

The spread of respondents was as per the table below:

Rangelands Tenure Options Discussion Paper Submissions

State Government Agency	5
State Government Board	2
State MP	1
Commonwealth Government Agency	1
Pastoralists	42
Pastoral Representative Group or Body	4
Conservation Interests (inc. business)	8
Tourism Interests (inc. business)	2
Indigenous Representative Group or Body	2
Mining Interests (inc. business)	3
Special Interest	2
Individuals	1
TOTAL	73

There were a number of common themes reflected in the feedback depending on the group type.

In summary, the pastoral industry feedback focussed on supporting the concept of a perpetual lease, raising concerns about the rangelands lease or making general comments about issues to do with pastoral lease administration. In general, the pastoral industry supports the perpetual pastoral lease, with some pastoralists also expressing the need for Government to support the native title negotiation process, preferably through a state-wide Indigenous Land Use Agreement (ILUA). Twenty-seven out of 46 (59%) pastoral respondents expressed support for the perpetual pastoral lease and seven requested a Government sponsored state-wide ILUA.

A considerable number of the pastoral industry respondents did not support the rangelands lease. A total of 19 out of 46 (41%) either opposed the rangelands lease or considered that it would be poorly supported or problematic. There were 15 (33%) who considered the rangelands lease would have a detrimental impact on the pastoral industry due to its potential to allow other users of the rangelands to establish uses that are inconsistent with pastoralism. Only three (6%) respondents in this group expressly supported the rangelands lease.

Pastoralists have also raised a number of other industry issues and requested consideration of a range of other measures in relation to amending the LAA, some of which are understood not to be feasible due to native title future act concerns. For example, changing the definition of pastoral purposes in LAA s.93 to be consistent with that under the NTA, allowing greater diversification options without the need for a permit (see Issue 3).

All eight submissions categorised as conservation interests support the rangelands lease. Only two opposed the perpetual pastoral lease and two others considered it acceptable only if increased requirements to monitor and/or improve rangeland condition are imposed.

Native title representative bodies have expressed concern that the new options, particularly the perpetual pastoral lease, threatened the rights and interests of native title holders and claimants.

The mining industry supported the intent of the reforms but was cautious about the rangelands lease. In particular, the reference to the rangelands lease being available for conservation purposes created concerns about access problems for future mining and exploration. While there is clear potential for a rangelands lease to be a more suitable form of tenure for existing pastoral leases held by mining companies, there was considerably more focus on the conservation issue.

Government agencies are generally supportive but also raise queries reflective of their portfolio interests.

Tourism interest groups are supportive of the rangelands lease but are seeking wider powers for third parties to be involved with or without pastoralists to develop high-end tourist facilities.

There are some concerns expressed by a wide range of stakeholders over a lack of consultation and short time frames to respond to the paper. Some groups have requested closer consultation or to be more closely involved with the process.

Some of the feedback indicates: confusion about what can or cannot be done on the rangelands under the LAA; whether the potential changes to the LAA are feasible; and the tone of the detail in the discussion paper concerning the rangelands lease. RDL recognises the need to raise awareness of how issues are being addressed.

Other feedback received indicates that the following areas require further development:

- Process for granting a rangelands lease;
- Potential categories of use for a rangelands lease; and
- Requirements to plan and implement appropriate rangeland condition monitoring and rehabilitation regimes.

Key Issues Raised and Government Response

ISSUE

Issue 1: The perpetual pastoral lease is appreciated for the improved security of tenure provided, but it would be preferable if the State Government is prepared to address the native title issues through negotiating a state-wide ILUA to facilitate pastoral lessee access to this option.

Issue 2: The rangelands lease will enable other users of the rangelands to permanently destock former pastoral leases, leading to loss of infrastructure, increased populations of feral animals and weeds, loss of community and economic decline of the pastoral industry.

Issue 3: The definition of pastoral purpose in s.93 LAA should be brought into line with the definition of primary production activities in the NTA, which would allow broader land uses without the need for a permit, while still falling within the future act regime.

Issue 4: Rights of pastoralists and others to take up the new options, particularly the rangelands lease.

Some pastoral lessees were concerned the new leases would be offered by public tender or that anyone could apply to hold a rangelands lease over the existing pastoral lease.

GOVERNMENT RESPONSE

The policy is not to adopt a state-wide ILUA.

Avenues of support under consideration are the possibility of the Subdivision I process under the NTA, the development of a template ILUA and/or assisting in direct support of native title negotiations.

The rangelands lease will continue to be promoted for the flexibility of land use options, and increased opportunity and sustainability it will bring to the rangelands. RDL will develop a further policy paper to deal with how the tenure options would be implemented and in the process develop responses to the relevant issues that arise. It will include requirements for feral animal and weed control commensurate with requirements on pastoral leases.

RDL is mindful of the concerns raised and does not intend for the rangelands lease to create negative economic and social impacts. While the individual circumstances of the lease and its proposed uses will be the overriding concern in the policies governing rangelands lease approval, the critical mass requirements of the pastoral industry will be taken into account.

In addition, some pastoralists no longer want to run livestock and may seek to change to rangelands lease tenure in order to develop other enterprises on their lease above and beyond what is currently permissible through the diversification permit provisions. All users will have similar requirements to capably manage the rangelands environment and are likely to need a management presence to do this over large areas.

There is also potential for new enterprises to be developed based on carbon sequestration and land rehabilitation that will provide new opportunities to those no longer involved in the pastoral industry.

The legal advice received indicates that such an amendment would itself be a future act requiring a state wide ILUA over all of the pastoral estate. From a policy perspective this is not supported. Therefore, it is not intended to amend the LAA in the manner suggested.

In most cases the existing pastoral lessee is to have the right to apply for conversion of a pastoral lease to a perpetual pastoral lease or rangelands lease. It is not proposed for one lease to exist over another (as opposed to a sublease, i.e. a lease within a lease). There may be some cases where a lease has a certain value or proposed uses that make it more appropriate for a public tender process to occur if the tenure is to be changed.

ISSUE

Issue 5: Abolish the need for, or relax the approval and referral process, for diversification permits on pastoral leases.

Issue 6: Amend the LAA to restrict the discretion of the Minister to renew leases in order to increase certainty for the lessee.

Issue 7: Pastoral leases beyond 2015 should have a standard 50-year term. It was also considered that the majority of pastoralists will not be interested in the perpetual pastoral lease and rangelands lease because of the anticipated cost and length of time to undertake the native title process.

GOVERNMENT RESPONSE

It is not intended to abolish the diversification permit system. The State must consider the public interest in relation to the management of Crown land. Permits are considered a responsible method of providing an appropriate level of control and monitoring of activities occurring in the rangelands.

The Rangelands Reform Program's Diversification Working Group is addressing this issue by examining ways of reducing unnecessary red tape and improving flexibility in the process.

Opportunities to streamline the approval process and in particular to identify proposals that are likely to be approved ahead of any formal submission are continuing.

This proposal has been considered and has merit. Legal advice indicates such an amendment is not likely to be a future act under the NTA. Under this proposal, provided the lessee had complied with all the terms and conditions of the lease, the LAA and any land condition monitoring requirements the lease would be renewed. It would give greater security to pastoralists who do not wish to take up a rangelands lease or perpetual pastoral lease. It is intended to include this amendment in the draft legislation.

In terms of the State wishing to acquire the land the subject of the lease, if the lessee is compliant and therefore has the right of renewal, the State cannot take land out of the lease at that time without paying compensation to the pastoral lessee.

If the lessee is not compliant, the Minister has discretion whether or not to renew the whole or part of the lease; and land can be excluded from the lease with compensation for improvements only at the time of renewal, in accordance with the existing provisions of the LAA.

In 2015 most pastoral leases will rollover to a new term. To avoid being a future act under the NTA, the new term must be the same as the existing term. For various administrative reasons, such as amalgamation of leases, pastoral lease terms now vary from 18 to 50 years.

Further legal advice is being sought on whether pastoral lessees who have a shortened lease due to past administrative processes can have the original (longer) term of their lease adopted for the purposes of renewal. In addition, the effect of the NTA is being considered.

Changes to the LAA are also required to remove the requirement for public offering of new pastoral leases, to facilitate the grant of leases for a longer term to the existing lessee.

ISSUE

Issue 8: Third Party involvement/ investment.

Some pastoral lessees and tourism industry respondents proposed easier access of third party investors to increase development on their lease.

Issue 9: It was proposed in the Rangelands Tenure Options discussion paper that lessees may elect to tie two different forms of tenure together over a rangelands or pastoral lease. This scheme was generally not supported by the pastoral industry and some other respondents due to complexity. The proposal is also considered by some to create a 'significant' disincentive for third party investment and will likely limit the level of tourism investment in the rangelands. Third party investors require the ability to acquire and dispose of their investments according to market conditions.

Issue 10: It was proposed in the Rangelands Tenure Options discussion paper to increase the maximum lease size to 1.5 million hectares. This was generally not considered workable by some of the pastoral industry respondents with many family operators considering that 500 000 hectares was an appropriate limit in terms of a pastoral management unit. Some concerns were raised about the impact of corporate, conservation and foreign ownership finding this change attractive and taking large areas of good grazing land out of production.

Issue 11: Some respondents proposed that carbon trading for sequestration and plantation sandalwood be granted as a right to the leaseholder.

GOVERNMENT RESPONSE

Under existing legislation, third party involvement can only occur under a LAA s. 79 lease and not through diversification permits.

The process would be easier under a rangelands lease which will allow for a sublease for purposes not pastoral. Alternative tenures under the LAA may also be appropriate for third party involvement.

It was identified in the discussion paper that there is a need for a legislative basis to enable a rangelands lease or pastoral lease to be tied to other tenures so that one cannot be transferred without the other. Tied leases could have the advantage of increased security for financing purposes. The option to mandate the tying of leases would prevent situations where a more intensive form of tenure is sold or transferred and the other associated rangelands lease or PL becomes an unviable proposition.

From a policy point of view it is considered that the increase in maximum lease holding size is needed. There are already cases of existing holdings of in excess of 500,000 hectares that the Minister has approved as meeting the public interest test under s. 136 of the LAA. Increasingly, there are requirements to assess proposals for larger lease holdings and the intent of the amendment is to reflect the reality of the changing size of pastoral holdings in the rangelands.

Pastoralist responses generally did not raise the issue of land use planning for the long term. Some policy consideration needs to be given to more extensive planning for land use in the rangelands. Some areas that are sustainable in the long term could be considered a priority to remain in pastoral production.

The changes required to put this into effect involve multiple agencies and will require extensive consultation. It is not intended to progress any changes for carbon trading or harvesting of wild grown or dead sandalwood in the current reform proposals. The full implications of the Commonwealth Government's Carbon Farming Initiative need to be evaluated prior to developing a State policy that would support appropriate legislative amendments. However, they may be addressed in a second round of revisions.

Carbon trading on Crown land from sequestration is a right of the Crown. The Minister may grant carbon rights to a lessee, although this is currently made difficult under the LAA as the use does not meet pastoral purposes or fit within the diversification permit arrangements.

The transfer of carbon rights to a rangelands lessee would be a straightforward process under a rangelands lease.

ISSUE

Issue 12: Financial speculation in carbon assets on public land should not be allowed.

Issue 13: Assessment, proposal and conditions for new lease options.

Questions have been raised by a broad range of respondents as to the requirements which will be in place as part of an application for the lease options, whether environmental targets will be set, and what measures will there be to ensure the sustainability and environmental protection of the rangelands under the new lease options.

Issue 14: More detail is needed on what is envisaged in the permitted uses of “horticulture, agriculture and tourism” (broad acre, remote, low value, etc).

Issue 15: The conflict in the LAA between the s.93 definition of pastoral purposes, which includes as valid purposes agricultural, horticultural, or other supplementary uses of the land, and the s.120 diversification permit requirement, which allows for a permit to be issued for crop, fodder, horticultural or other specified kind of agricultural production, should be rectified.

GOVERNMENT RESPONSE

It is likely that this would be controlled through regulation. The State is yet to develop a carbon policy for Crown land and the impact of the Commonwealth’s Carbon Farming Initiative will also need to be assessed in terms of its possible effects on Western Australian legislation.

The detailed process is yet to be established, with the broad guidelines and policy issues on how the tenure options would be implemented to be further developed. As a general rule, a range of considerations may have to be taken into account depending on the type of application and the situation of the lease.

There will be broad minimum requirements inserted into the LAA amendments, but these will not be based on specific environmental plans that require lessees to achieve specific environmental targets.

The policy approach to be taken toward achieving restoration of the rangelands will be through positive means such as promotion of stewardship arrangements and carbon sequestration activities, rather than legislative enforcement.

Rangelands lease applicants would be expected to demonstrate that the planned uses are suitable and sustainable for the situation. A rangelands lease policy covering the administrative arrangements is currently being developed.

The legislation will have a very broad statement on permitted uses to the extent that a rangelands lease is for broad scale use of the rangelands. The definitions of terms such as horticulture, agriculture and tourism are intended to be addressed in the lease document itself and in guidelines that publicise the rangelands lease.

It is not intended to amend these sections. While the two sections appear inconsistent, the explanation is that as a legal principle of statutory interpretation a specific clause in legislation (s.120) is interpreted as having an overriding effect on a general one (s.93). Therefore, a specific clause to require a diversification permit overrides a general definition outlining the broad activities possible on a pastoral lease.

The option to change the pastoral purposes definition is also made impractical by the future act provisions of the NTA. A legislative change to the definition would itself be a future act. However, some flexibility in interpretation of pastoral purposes is possible and is being progressed as the most practical means of addressing the issue.

ISSUE

Issue 16: Body responsible for administering the rangelands lease with respect to rangeland condition monitoring.

Some pastoralists and the Pastoral Lands Board (PLB) commented that the PLB should have responsibility for administering the rangelands lease, not the Minister.

Other respondents considered a Rangelands Council or similar body that is more broadly representative of the community is more appropriate.

Issue 17: Some respondents proposed other lease options, such as a perpetual term rangelands lease.

Issue 18: Could an additional permit clause be inserted into Part 7 of the LAA allowing application for any activity on unimproved and unenclosed parts of a pastoral lease?

Issue 19: A rangelands lease solely for conservation purposes is not supported due to its potential to sterilise land from mining.

GOVERNMENT RESPONSE

As per the discussion paper, it is intended that the Minister will be responsible for administering the rangelands lease. The Minister could delegate this function to RDL only, not to the PLB or any other representative body without an amendment to the LAA. However, the Minister will have the ability to seek advice from a range of bodies, including the PLB, in discharging this function.

Given the breadth of potential options under a rangelands lease, some land uses may not be appropriate for a perpetual term.

A permit provision with a high degree of flexibility is considered administratively not as workable as a rangelands lease. The rangelands lease is considered the best long term option to allow for more flexible uses of the rangelands.

It is not the intention that a rangelands lease undertaken solely for conservation would have any potential to preclude mining and/or exploration. A rangelands lease applicant would need to acknowledge that mining activities are possible on the land the subject of the lease and be prepared to negotiate access.

It is not proposed to change in any way the power of the Minister for Mines to issue tenements over rangelands leases and the situation will be the same as that which currently exists for pastoral leases.

It is recommended that the parties involved need to consult and negotiate access.

It is envisaged that a rangelands lease may be helpful for the mining industry as it would be an alternative to the current situation where mining companies holding pastoral leases are required to maintain pastoral activities. Areas of the lease not subject to, or planned for mining, could be used for other purposes including conservation.

ISSUE

Issue 20: It was requested that a moratorium be placed on granting rangelands leases over Unallocated Crown Land (UCL) until a clear and transparent assessment process has been established and that a rangelands lease not be granted over existing UCL for pastoral use.

Issue 21: The broader values of a region should be taken into account in granting a rangelands lease.

Issue 22: Strategic planning should take place under a broad state framework and that decisions on land use should be based on a high level of scientific information about the relative conservation and resource values of the land.

Issue 23: A lease, such as a rangelands lease, made available for conservation purposes, should be able to have the option of a conservation covenant.

Issue 24: There should be an exemption from land tax and rates for conservation purposes.

Issue 25: It was suggested that categories of rangelands lease be created to reduce uncertainty and establish an orderly regulatory framework. The suggested categories are:

1. Indigenous
2. Conservation/Research/Tourism
3. Primary Production
4. Carbon sequestration.

GOVERNMENT RESPONSE

The rangelands lease will not be available until new legislation supporting it is enacted and an application and assessment process established.

The general principle for the rangelands lease is appropriate uses for appropriate locations. While creation of new leases over existing UCL that would allow for pastoral purposes cannot be ruled out under the proposed tenure options changes, this would not apply to former pastoral lands purchased for conservation but existing as UCL until reserved. For example, minor add-ons of UCL to existing leases for pastoral purposes may be considered but creating an entirely new pastoral lease over a small area of UCL would likely be considered unsustainable.

While it should be a policy principle that consideration is given to the broader values of a region, the individual circumstances of the lease and the proposed uses will be overriding concerns in the outcome of the process.

These will be taken into account, where they exist.

The Department of Planning is developing a State Planning Framework including regional planning frameworks in some regions.

A conservation covenant could be granted over a rangelands lease but only for the term of the lease. There are difficulties in the current legislation with having these over a pastoral lease, in that it would be inconsistent with pastoral purpose.

The existing rules in relation to land tax and exemptions will apply to a rangelands lease. There is no intention to change the policy considerations in relation to how land tax is levied over State land.

Local government rates will continue to be based on the Valuer General's valuation and from there it is an issue for local government who may apply differential rating.

An orderly regulatory framework should not need to rigidly formalise potential options for use of the rangelands under a rangelands lease. One of the key attributes of the rangelands lease is its flexibility for a range of land uses and for multiple land uses on the one lease. The issue will be addressed in the development of the administrative arrangements. A rangelands lease policy covering the administrative arrangements is currently being developed.

ISSUE

Issue 26: The granting of new tenure options such as the perpetual pastoral lease and the rangelands lease will extinguish native title and force pastoralists and Traditional Owners into conflict leading to protracted litigation.

Issue 27: The State needs to provide for Indigenous consultation costs in relation to native title.

Issue 28: The rangelands lease will only support low intensity/ impact tourism which is unlikely to attract or be supported by investment in key tourism markets.

Issue 29: Will the rangelands lease be able to support a sublease to a third party developer or operator? Security of tenure is an important feature of the lease in order to attract third party investment.

Issue 30: A rangelands lease for tourism should allow for a linked LAA s.79 lease that can go through a streamlined process.

Issue 31: Some pastoralists may be able to wield significant market power over state assets due to the significant tourism values on their leases. There needs to be a mechanism to resolve disputes about access in these situations.

GOVERNMENT RESPONSE

The effect on native title of the proposed reforms is outlined in the discussion paper, that is, the proposal of an ILUA to satisfy the future act obligations under rangelands lease and perpetual pastoral lease. This is supported by legal advice received.

Consideration will be given to negotiating with leaseholders and Native Title bodies to develop template ILUAs that are acceptable to be used with various types of leases.

This is generally considered to be an issue between the negotiating parties. However, consideration may be given to developing a negotiation framework to facilitate better consultation outcomes.

The rangelands lease is an option for broad acre use of the rangelands. High intensity tourism requiring strong levels of investment is outside the intent of the rangelands lease and indicates the need for a more appropriate level of tenure, such as an LAA s. 79 lease. This form of tenure would also give the lessee exclusive possession of the site.

The ability to tie a rangelands lease and s. 79 lease is being considered as discussed above.

Yes, a sublease to a third party will be possible. This is an advantage of the rangelands lease as this is not possible under the current pastoral lease (i.e. a diversification permit may only be granted to the pastoral lessee.) Parties will still need to negotiate with native title bodies.

As suggested, a streamlined approach could be considered and where the requirement for a s. 79 lease is identified early, RDL could incorporate this into the process. Parties will still need to negotiate with native title bodies and this process can be lengthy.

The parties are encouraged to negotiate in such instances. Under the LAA, the Minister has the power to “take” areas of Crown land, including pastoral land, for other purposes where the State interest is served.

ISSUE

Issue 32: Issues were raised about the effect of the alternative tenure options on protecting rights of public access to tourism and other recreational areas and instances where pastoralists charge a fee to access the coast.

Issue 33: Rights to renew the rangelands lease. Section 4.2.2 (ii) (page 9) of the Rangelands Tenure Options Discussion Paper contains the following conflicting statements:

- “The lease may include a right of renewal”; and
- “A lessee will have the right to renew subject to complying with lease and LAA provisions”.

Issue 34: The rangelands lease may need to be checked for its impact on water quality in water source protection areas and on groundwater resources.

Issue 35: To what extent can LAA s. 79 leases be used for broad scale, intensive agricultural development?

GOVERNMENT RESPONSE

The policy on public access on a rangelands lease and a perpetual pastoral lease will be the same as for the existing pastoral lease.

Unless on a public road, the permission of the lessee will be required to travel through a rangelands lease, as currently exists for a pastoral lease.

Pastoral lessees have the right to charge a fee to cover reasonable costs for maintaining access to areas frequented by the public on their lease.

A right to renew may be a condition of the lease at the Minister’s discretion. If a right to renew is granted, it is on the basis of ongoing compliance with lease and administrative conditions.

Similar to pastoral leases, the new lease options will be subject to the same restrictions with respect to protection of water sources.

S. 79 leases can be used for intensive agricultural developments. As native title needs to be addressed as part of the requirements to enter into a s. 79 lease, these can take longer to establish.



ISSUE

Issue 36: Abolish Ministerial consent for transfer of leases and approval of third party encumbrances.

Issue 37: Tenure reform should include a commitment for future tenures to be managed in keeping with LAA Section 95 (c) “to ensure that pastoral leases are managed on an ecologically sustainable basis”.

Issue 38: In expanding the range of management purposes, new initiatives for binding conservation management agreements or rangeland resource condition enhancement agreements, as well as non binding agreements, should be developed and implemented to provide encouragement to lessees and suitable protection and recognition of lessee commitments and achievements in protecting public assets.

GOVERNMENT RESPONSE

All lease types are subject to Ministerial approval so it is not anticipated that certain classes of leases should now become exempt. These are considered to be different issues to Issue 6, involving a pastoral lessee’s right to renew.

The need for Ministerial consent to transactions in Crown land is a vital measure for:

- ensuring that law and policy are complied with in relation to leases under the LAA;
- the State to conduct due diligence reviews of a proposed lessee to ensure they have capacity to operate the lease successfully;
- requiring the incoming lessee to accept responsibilities and liabilities to comply with all requirements under the lease and the LAA;
- ensuring the outgoing lessee is not in breach of the lease provisions and the LAA including the payment of outstanding rents, and those breaches are remedied before the transfer or if not that the incoming lessee is aware of and agrees to remedy them.

The last requirement is particularly relevant in the context of pastoral leases and will be in the case of rangelands leases (re rangeland condition monitoring).

It also reflects the Crown’s ownership of the land. If a party wishes to acquire a lease of Crown land, they need to deal with the Minister for Lands. It would be unusual for any lease or tenancy of private land not to require the lessor’s consent to a transfer or assignment.

The requirement for Minister’s consent to dealings over Crown land is provided for in ss18, 46(3), 75(5) and (6), and 134 of the LAA. Rangelands leases will in this regard be no different to s79 leases and should be treated the same way.

The maintenance and improvement of rangelands resource condition in determining suitable tenures and management arrangements for future pastoral leases, perpetual pastoral leases and rangelands leases will be taken into account.

The broad application of support and encouragement mechanisms for lessees maintaining and improving rangeland resource condition for rangelands leases, pastoral leases and perpetual pastoral leases will be investigated.

Issues raised that were considered outside of the Rangelands Reform Program:

Public access rights on pastoral leases

Access rights are governed by published codes of practice. For more information see:

- “the Code of Conduct for Mineral Exploration on Pastoral Leases” published by the Pastoralists and Graziers Association of Western Australia, Chamber of Minerals and Energy and Association of Mining and Exploration Companies;
- the Department of Mines and Petroleum website at http://www.dmp.wa.gov.au/documents/Pastoral_Leases-Prospecting_Exploring_Mining.pdf; and
- “Travelling in Outback Western Australia”, published by RDL

In specific areas where greater public access is an increasing expectation, it is acknowledged that more intensive responses are required.

Permission to sow other non-indigenous grasses

The PLB, in conjunction with the Department of Agriculture and Food Western Australia (DAFWA) and the Department of Environment and Conservation, is developing a policy regarding the cultivation of non-indigenous plant species on pastoral leases.

Pastoral lease rent, and right of appeal against rent increases

Legislative amendments to lease rent provisions are being progressed by RDL.

Rangeland condition self-monitoring

Rangeland condition monitoring self-assessment is being progressed by the PLB and DAFWA and concerns about this should be addressed to them.

Freeholding of homesteads and key pastoral infrastructure

While the conversion of leasehold to freehold is possible under the LAA, State Government policy allows for freeholding of lease land only in limited circumstances due to planning and land management considerations. The ability to tie freehold and s. 79 leases to other tenure, such as the proposed rangelands lease, is needed to ensure separate economic units over an area of land are transferred together. This is to prevent the situation where only one may be transferred, leaving the other moribund or economically unviable.

Avenue of appeal for pastoral lease excisions

The ways in which land can be excised from a pastoral lease are as follows:

1. 2015 exclusion process - these are completed and there is no formal avenue of appeal
2. On future expiry of pastoral lease - on the current provisions in the LAA, this is at the Minister's discretion and there is no formal avenue of appeal if he/she decides not to renew over some/all of the land
3. On taking of land under Part 9 LAA - lessee has a right to object to the taking under Part 9 to the Minister - no right of appeal to any other body
4. Surrender from pastoral lease - with lessee's consent
5. In summary, other than a right to object on a taking, there is no formal avenue of appeal on land being excised from a pastoral lease and none is proposed.

2015 pastoral lease renewal clause in the LAA is inconsistent with the NTA and is open to challenge. The pastoral leases will in fact expire and tenure will pass to Traditional Owners.

Part 7 of the LAA came into effect on the basis that no provisions contained within it were considered to trigger state wide future acts under the NTA. To date there has not been any legal challenge to steps taken to rollover pastoral leases in 2015.



Department of Regional Development and Lands

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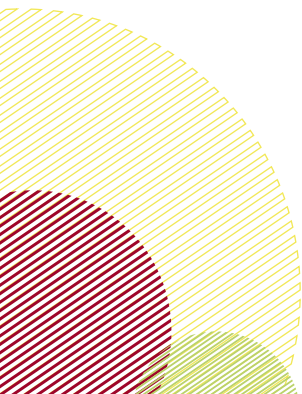
Country calls, free call: 1800 735 784

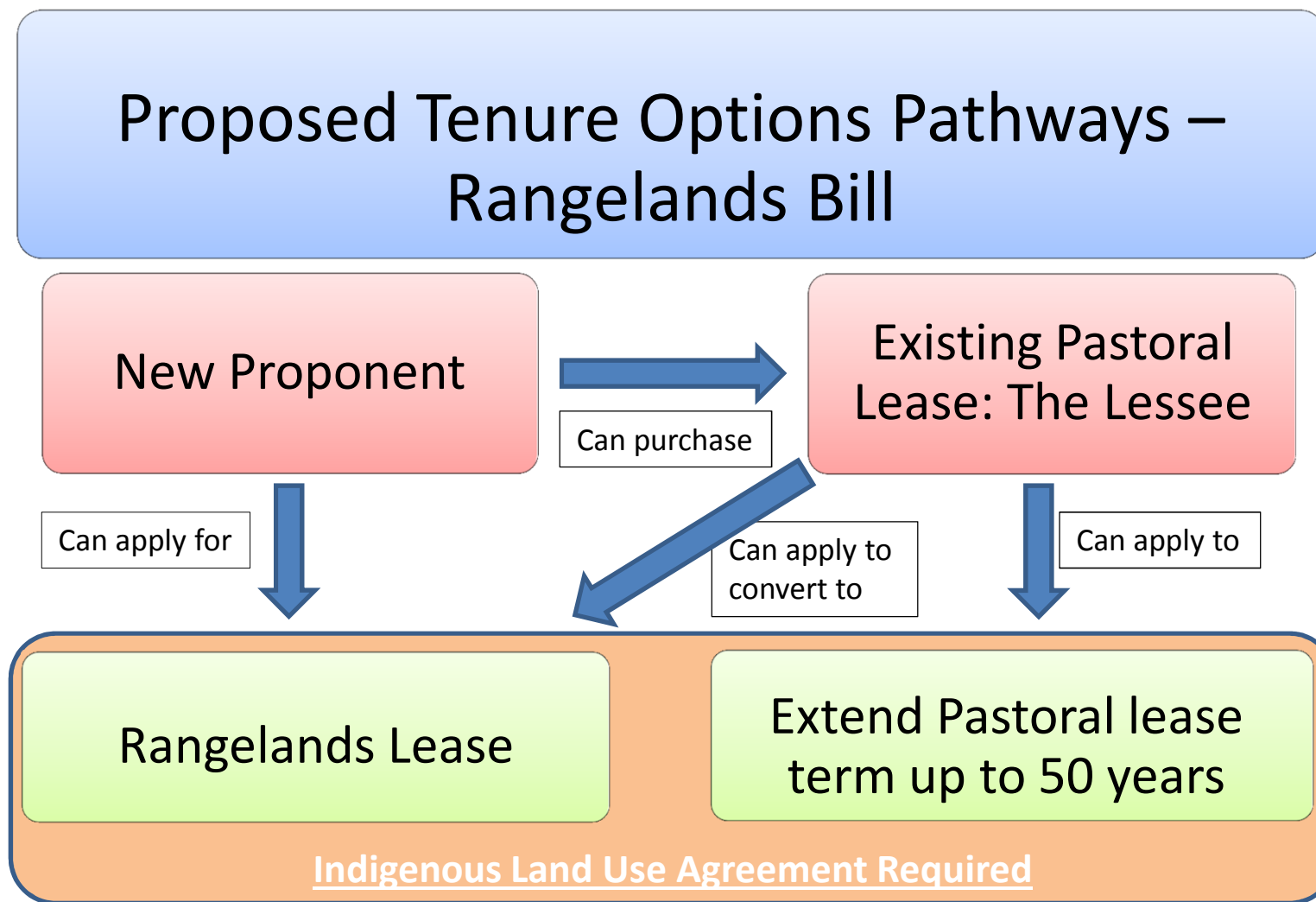
Street address:

Level 2, Gordon Stephenson House

140 William Street

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Conditions To Be Met Before New Tenure Granted

- Native title future act process must be completed (likely to be negotiation of ILUA)
- Detailed Business Case (Rangelands Lease)
- Surrender of existing pastoral lease prior to grant of Rangelands Lease or Pastoral Lease for extended term

Rangelands Bill - Consultation Regulatory Impact Statement

Option 2 - Non-regulatory Options Cost Benefit Analysis

	Year										Total
	1	2	3	4	5	6	7	8	9	10	
No. of Rangelands Leases											0
No. of Perpetual Pastoral Leases											0
No. of additional permits	2	4	5	5	10	10	5	5	5	5	56
No. of term length increases	0	0	0	0	0	0	0	0	0	0	0
Total new leases and permits	2	4	5	5	10	10	5	5	5	5	56
Cost increase - native title											\$ -
Cost increase - rent	\$ 2,000	\$ 4,000	\$ 5,000	\$ 5,000	\$ 10,000	\$ 10,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 56,000
Cost increase - local government rates	\$ 2,000	\$ 4,000	\$ 5,000	\$ 5,000	\$ 10,000	\$ 10,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 56,000
											\$ 112,000
Calculation of cumulative rent or rates	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	\$ 20,000
		4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	\$ 36,000
			5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	\$ 40,000
				5,000	5,000	5,000	5,000	5,000	5,000	5,000	\$ 35,000
					10,000	10,000	10,000	10,000	10,000	10,000	\$ 60,000
						10,000	10,000	10,000	10,000	10,000	\$ 50,000
							5,000	5,000	5,000	5,000	\$ 20,000
								5,000	5,000	5,000	\$ 15,000
									5,000	5,000	\$ 10,000
										5,000	\$ 5,000
Rent & Rates - total cumulative cost	2,000	6,000	11,000	16,000	26,000	36,000	41,000	46,000	51,000	56,000	\$ 291,000
Cost Summary											
Native Title											\$ -
Rent	\$ 2,000	\$ 6,000	\$ 11,000	\$ 16,000	\$ 26,000	\$ 36,000	\$ 41,000	\$ 46,000	\$ 51,000	\$ 56,000	\$ 291,000
Local Government	\$ 2,000	\$ 6,000	\$ 11,000	\$ 16,000	\$ 26,000	\$ 36,000	\$ 41,000	\$ 46,000	\$ 51,000	\$ 56,000	\$ 291,000
Total	\$ 4,000	\$ 12,000	\$ 22,000	\$ 32,000	\$ 52,000	\$ 72,000	\$ 82,000	\$ 92,000	\$ 102,000	\$ 112,000	\$ 582,000
Income											
SCENARIO: Assume minor increases in permit income due to additional permits arising from streamlining and awareness raising activities.											
RL Ave: 150,000 ha	0	0	0	0	0	0	0	0	0	0	0
PPL Ave: 250,000 ha	0	0	0	0	0	0	0	0	0	0	0
Others Ave: 200,000 ha	0	0	0	0	0	0	0	0	0	0	0
Diversification	30,000	60,000	75,000	75,000	150,000	150,000	75,000	75,000	75,000	75,000	840,000
Cumulative - RL											0
											0
											0
											0
											0
											0
											0
											0
Total			0	0	0	0	0	0	0	0	0
Cumulative - PPL											0
											0
											0
											0
											0
											0
Total	0	0	0	0	0	0	0	0	0	0	0
Cumulative - Other leases											0
											0
											0
											0
											0
Total	0	0	0	0	0	0	0	0	0	0	0
Cumulative - Diversification permit	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	240,000
		60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	480,000
			75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	600,000
				75,000	75,000	75,000	75,000	75,000	75,000	75,000	525,000
					150,000	150,000	150,000	150,000	150,000	150,000	900,000
						150,000	150,000	150,000	150,000	150,000	750,000
							75,000	75,000	75,000	75,000	300,000
								75,000	75,000	75,000	225,000
									75,000	75,000	150,000
										75,000	75,000
Total	30,000	90,000	165,000	240,000	390,000	540,000	615,000	690,000	765,000	840,000	4,245,000
TOTAL INCOME											
Rangelands Lease	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Perpetual Pastoral Lease	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other leases											
Diversification Permits	\$ 30,000	\$ 90,000	\$ 165,000	\$ 240,000	\$ 390,000	\$ 540,000	\$ 615,000	\$ 690,000	\$ 765,000	\$ 840,000	\$ 4,245,000
TOTAL	\$ 30,000	\$ 90,000	\$ 165,000	\$ 240,000	\$ 390,000	\$ 540,000	\$ 615,000	\$ 690,000	\$ 765,000	\$ 840,000	\$ 4,245,000
Income	\$ 30,000	\$ 90,000	\$ 165,000	\$ 240,000	\$ 390,000	\$ 540,000	\$ 615,000	\$ 690,000	\$ 765,000	\$ 840,000	\$ 4,365,000
Cost	\$ 4,000	\$ 12,000	\$ 22,000	\$ 32,000	\$ 52,000	\$ 72,000	\$ 82,000	\$ 92,000	\$ 102,000	\$ 112,000	\$ 582,000
Net flow	\$ 26,000	\$ 78,000	\$ 143,000	\$ 208,000	\$ 338,000	\$ 468,000	\$ 533,000	\$ 598,000	\$ 663,000	\$ 728,000	\$ 3,783,000
Discount rate	0.08	NPV1:	\$2,185,258.33								
Calculation of cost to Government											
Average cost of an action in DoL	\$ 6,456.00										
Total cost of administering SLS in 2012-13	\$29,930,000										
Total cost of administering SLS in 2013-14	\$33,290,000										
Projected annual cost of administering SLS including new options	\$31,127,200.00	\$32,372,288.00	\$33,746,717.44	\$35,216,409.50	\$36,826,493.08	\$38,587,748.64	\$40,470,069.47	\$42,480,880.56	\$44,627,903.95	\$46,919,170.51	\$382,374,881.14
New options as a percentage of total administration cost	0.04	0.13	0.24	0.34	0.55	0.75	0.84	0.92	1.00	1.08	0.64
Number of initial actions	2	4	5	5	10	10	5	5	5	5	56
Number of subsequent actions (add 1 per yr)		2	6	11	5	10	10	5	5	5	59
					11	16	26	36	41	46	176
Total number of actions	2	6	11	16	26	36	41	46	51	56	291
Total cost of actions (4% inflation)	\$ 13,428.48	\$ 41,834.88	\$ 79,537.92	\$ 119,823.36	\$ 201,427.20	\$ 288,195.84	\$ 338,810.88	\$ 392,008.32	\$ 447,788.16	\$ 506,150.40	\$ 2,429,005.44
Total cost of actions - inflation compounded	\$ 13,428.48	\$ 41,896.86	\$ 79,883.34	\$ 120,841.71	\$ 204,222.49	\$ 294,080.39	\$ 348,321.88	\$ 406,432.16	\$ 468,633.95	\$ 535,161.60	\$ 2,512,902.86
State Government income	\$ 2,000	\$ 6,000	\$ 11,000	\$ 16,000	\$ 26,000	\$ 36,000	\$ 41,000	\$ 46,000	\$ 51,000	\$ 56,000	\$ 291,000
State Government cost	\$13,428	\$41,897	\$79,883	\$120,842	\$204,222	\$294,080	\$348,322	\$406,432	\$468,634	\$535,162	\$ 2,512,903
Net flow	-\$ 11,428	-\$ 35,897	-\$ 68,883	-\$ 104,842	-\$ 178,222	-\$ 258,080	-\$ 307,322	-\$ 360,432	-\$ 417,634	-\$ 479,162	-\$ 2,221,903
Government discount rate	0.05	NPV2:	-\$1,547,163.69								

NPV1 - NPV2 = \$638,094.63

Breakeven Year	3175.328964	9525.986892	113518.0105	152886.2094	230037.1206	294919.3854	311000.3807	323080.7929	331665.0652	337204.8593	2107013.14
			113518.0105	266404.2198	496441.3404	791360.7258	1102361.107	1425441.899	1757106.965	2094311.824	

Year	1	2	3	4	5	6	7	8	9	10	Total
No. of Rangelands Leases	0	0	5	5	10	15	15	15	20	15	100
No. of additional permits	0	0	2	5	5	5	5	5	10	10	47
No. of term length increases	0	0	0	0	0	0	0	1	1	1	3
Total new Crown land actions	0	0	7	10	15	20	20	21	31	26	150
Cost increase - native title	\$ -	\$ -	\$ 350,000	\$ 500,000	\$ 750,000	\$ 1,000,000	\$ 1,000,000	\$ 1,050,000	\$ 1,550,000	\$ 1,300,000	\$ 7,500,000
Cost increase - rent	\$ -	\$ -	\$ 27,000	\$ 30,000	\$ 55,000	\$ 80,000	\$ 80,000	\$ 81,000	\$ 111,000	\$ 86,000	\$ 550,000
Cost increase - LG rates	\$ -	\$ -	\$ 27,000	\$ 30,000	\$ 55,000	\$ 80,000	\$ 80,000	\$ 81,000	\$ 111,000	\$ 86,000	\$ 550,000
											\$ 8,600,000
Calculation of cumulative rent or rates	\$ -	\$ -	\$ 27,000	\$ 27,000	\$ 27,000	\$ 27,000	\$ 27,000	\$ 27,000	\$ 27,000	\$ 27,000	\$ 216,000
				\$ 31,000	\$ 31,000	\$ 31,000	\$ 31,000	\$ 31,000	\$ 31,000	\$ 31,000	\$ 217,000
					\$ 56,000	\$ 56,000	\$ 56,000	\$ 56,000	\$ 56,000	\$ 56,000	\$ 336,000
						\$ 81,000	\$ 81,000	\$ 81,000	\$ 81,000	\$ 81,000	\$ 405,000
							\$ 81,000	\$ 81,000	\$ 81,000	\$ 81,000	\$ 324,000
								\$ 82,000	\$ 82,000	\$ 82,000	\$ 246,000
									\$ 113,000	\$ 113,000	\$ 226,000
										\$ 89,000	\$ 89,000
Rent & Rates - total cumulative cost	\$ -	\$ -	\$ 27,000	\$ 58,000	\$ 114,000	\$ 195,000	\$ 276,000	\$ 358,000	\$ 471,000	\$ 560,000	\$ 2,059,000
Cost Summary											
Native Title	\$ -	\$ -	\$ 350,000	\$ 500,000	\$ 750,000	\$ 1,000,000	\$ 1,000,000	\$ 1,050,000	\$ 1,550,000	\$ 1,300,000	\$ 7,500,000
Rent	\$ -	\$ -	\$ 27,000	\$ 58,000	\$ 114,000	\$ 195,000	\$ 276,000	\$ 358,000	\$ 471,000	\$ 560,000	\$ 2,059,000
Local Government	\$ -	\$ -	\$ 27,000	\$ 58,000	\$ 114,000	\$ 195,000	\$ 276,000	\$ 358,000	\$ 471,000	\$ 560,000	\$ 2,059,000
Total	\$ -	\$ -	\$ 404,000	\$ 616,000	\$ 978,000	\$ 1,390,000	\$ 1,552,000	\$ 1,766,000	\$ 2,492,000	\$ 2,420,000	\$ 11,618,000
Income											
SCENARIO 3: Assume above scenario results in an area of 15m ha and earns additional income of \$1.00 per ha per yr for RL; 50c per ha per yr for pastoral and \$75,000 per yr for a permit											
RL Ave: 150,000 ha	\$ -	\$ -	\$ 750,000	\$ 750,000	\$ 1,500,000	\$ 2,250,000	\$ 2,250,000	\$ 2,250,000	\$ 3,000,000	\$ 2,250,000	\$ 15,000,000
Others Ave: 200,000 ha	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,000	\$ 100,000	\$ 100,000	\$ 300,000
Diversification	\$ -	\$ -	\$ 150,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 750,000	\$ 750,000	\$ 3,525,000
Cumulative - RL			\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 6,000,000
				\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 5,250,000
					\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 9,000,000
						\$ 2,250,000	\$ 2,250,000	\$ 2,250,000	\$ 2,250,000	\$ 2,250,000	\$ 11,250,000
							\$ 2,250,000	\$ 2,250,000	\$ 2,250,000	\$ 2,250,000	\$ 9,000,000
								\$ 2,250,000	\$ 2,250,000	\$ 2,250,000	\$ 6,750,000
									\$ 3,000,000	\$ 3,000,000	\$ 6,000,000
										\$ 2,250,000	\$ 2,250,000
Total	\$ -	\$ -	\$ 750,000	\$ 1,500,000	\$ 3,000,000	\$ 5,250,000	\$ 7,500,000	\$ 9,750,000	\$ 12,750,000	\$ 15,000,000	\$ 55,500,000
Cumulative - Other leases								\$ 100,000	\$ 100,000	\$ 100,000	\$ 300,000
									\$ 100,000	\$ 100,000	\$ 200,000
										\$ 100,000	\$ 100,000
Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,000	\$ 200,000	\$ 300,000	\$ 600,000
Cumulative - Diversification permit			\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 1,200,000
				\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 2,625,000
					\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 2,250,000
						\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 1,875,000
							\$ 375,000	\$ 375,000	\$ 375,000	\$ 375,000	\$ 1,500,000
								\$ 375,000	\$ 375,000	\$ 375,000	\$ 1,125,000
									\$ 750,000	\$ 750,000	\$ 1,500,000
										\$ 750,000	\$ 750,000
Total	\$ -	\$ -	\$ 150,000	\$ 525,000	\$ 900,000	\$ 1,275,000	\$ 1,650,000	\$ 2,025,000	\$ 2,775,000	\$ 3,525,000	\$ 12,825,000
TOTAL INCOME											
Rangelands Lease	\$ -	\$ -	\$ 750,000	\$ 1,500,000	\$ 3,000,000	\$ 5,250,000	\$ 7,500,000	\$ 9,750,000	\$ 12,750,000	\$ 15,000,000	\$ 55,500,000
Other leases						\$ -	\$ -	\$ 100,000	\$ 200,000	\$ 300,000	\$ 600,000
Diversification Permits	\$ -	\$ -	\$ 150,000	\$ 525,000	\$ 900,000	\$ 1,275,000	\$ 1,650,000	\$ 2,025,000	\$ 2,775,000	\$ 3,525,000	\$ 12,825,000
TOTAL	\$ -	\$ -	\$ 900,000	\$ 2,025,000	\$ 3,900,000	\$ 6,525,000	\$ 9,150,000	\$ 11,875,000	\$ 15,725,000	\$ 18,825,000	\$ 68,925,000
Income	\$ -	\$ -	\$ 900,000	\$ 2,025,000	\$ 3,900,000	\$ 6,525,000	\$ 9,150,000	\$ 11,875,000	\$ 15,725,000	\$ 18,825,000	\$ 68,925,000
Cost	\$ -	\$ -	\$ 404,000	\$ 616,000	\$ 978,000	\$ 1,390,000	\$ 1,552,000	\$ 1,766,000	\$ 2,492,000	\$ 2,420,000	\$ 11,618,000
Net flow	\$ -	\$ -	\$ 496,000	\$ 1,409,000	\$ 2,922,000	\$ 5,135,000	\$ 7,598,000	\$ 10,109,000	\$ 13,233,000	\$ 16,405,000	\$ 57,307,000
Discount rate	0.08	NPV1:	\$30,767,404.92								
Calculation of cost to Government											
Average cost of an action in DoL	\$6,456.00										
Total cost of administering DoL in 2012-13	\$29,930,000										
Total cost of administering DoL in 2013-14	\$33,290,000										
Average cost of administering DoL 2012-14	\$31,610,000										
Projected annual cost of administering DoL including new options	\$32,874,400.00	\$34,189,376.00	\$35,607,566.08	\$37,211,603.76	\$39,079,680.71	\$41,315,324.90	\$43,992,634.22	\$47,158,456.39	\$50,950,089.36	\$55,464,614.54	\$417,843,745.96
New options as a percentage of total administration cost	0.00	0.00	0.14	0.48	0.97	1.63	2.33	2.98	3.74	4.47	1.94
Number of initial actions	0	0	7	10	15	20	20	21	31	26	150
Number of subsequent actions			0	14	20	30	40	40	42	62	248
					14	34	64	104	144	186	546
Total number of actions	0	0	7	24	49	84	124	165	217	274	944
Total cost of actions (4% inflation)	\$ -	\$ -	\$ 50,615.04	\$ 179,735.04	\$ 379,612.80	\$ 672,456.96	\$ 1,024,696.32	\$ 1,406,116.80	\$ 1,905,294.72	\$ 2,476,521.60	\$ 8,095,049.28
Total cost of actions - real terms (no inflation)	\$ -	\$ -	\$ 45,192.00	\$ 154,944.00	\$ 316,344.00	\$ 542,304.00	\$ 800,544.00	\$ 1,065,240.00	\$ 1,400,952.00	\$ 1,768,944.00	\$ 6,094,464.00
Total cost of actions - inflation compounded	\$ -	\$ -	\$ 50,834.85	\$ 181,262.56	\$ 384,880.85	\$ 686,187.57	\$ 1,053,461.29	\$ 1,457,854.50	\$ 1,993,991.53	\$ 2,618,469.25	\$ 8,426,942.39
Government income	\$ -	\$ -	\$ 27,000	\$ 58,000	\$ 114,000	\$ 195,000	\$ 276,000	\$ 358,000	\$ 471,000	\$ 560,000	\$ 2,059,000.00
Government cost	\$ -	\$ -	\$ 45,192.00	\$ 154,944.00	\$ 316,344.00	\$ 542,304.00	\$ 800,544.00	\$ 1,065,240.00	\$ 1,400,952.00	\$ 1,768,944.00	\$ 6,094,464.00
Net flow	\$ -	\$ -	\$ 18,192.00	\$ 96,944.00	\$ 202,344.00	\$ 347,304.00	\$ 524,544.00	\$ 707,240.00	\$ 929,952.00	\$ 1,208,944.00	\$ 4,035,464.00
Government discount rate	0.05	NPV2:	-\$2,706,290.01								
		NPV1 - NPV2 =	\$28,061,114.91								
Breakeven Year>	\$ -	\$ -	\$ 393,740.79	\$ 1,035,657.06	\$ 1,988,664.10	\$ 3,235,921.03	\$ 4,433,360.02	\$ 5,461,578.15	\$ 6,619,794.58	\$ 7,598,689.17	\$ 30,767,404.92
			\$ 393,740.79	\$ 1,429,397.85	\$ 3,418,061.96	\$ 6,653,982.99	\$ 11,087,343.01	\$ 16,548,921.17	\$ 23,168,715.75	\$ 30,767,404.92	