



Department of Planning,
Lands and Heritage



FEBRUARY 2024

Pastoral Lands Board Policy Statement No.11

SUBLEASING PART OF A PASTORAL LEASE

The Pastoral Lands Board acknowledges the traditional owners and custodians of this land. We pay our respect to Elders past and present, their descendants who are with us today, and those who will follow in their footsteps.

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POLICY STATEMENT

From time to time a pastoral leaseholder may wish to sublease part of their lease area to a third party. To sublease all of a lease written approval must be obtained from the Minister for Lands (Minister) or their delegate in the Ministers capacity as the body corporate continued under section 7(1) of the *Land Administration Act 1997* (LAA). To sublease part of a lease written approval must be obtained from both the Minister and the Pastoral Lands Board (the Board).

PURPOSE / OBJECTIVE

This policy outlines the process and conditions for the approval of the right to sublease a pastoral lease to a third party.

It should be noted that the sublease itself (i.e. the written document containing the terms and conditions of the agreement between Lessee and Sub-lessee (the individual or company holding the sublease)) is a private agreement between those who are party to the agreement. The Board accepts no liability for any matters arising from the terms and conditions of the agreement.

BACKGROUND

Pastoral leases (Crown land granted under section 101 of the LAA or continued under section 143 of the LAA) are administered under the LAA by the Minister on behalf of the State (the landlord). The Board provides advice, assistance, and recommendations to the Minister in the administration of pastoral leases. The Board has an obligation under section 95(c) of the LAA to ensure that pastoral leases are managed on an ecologically sustainable basis.

The LAA sets out several requirements with which pastoral leaseholders must comply. Sub-lessees of a pastoral lease are also bound by the requirements of the LAA although, for the purposes of the LAA, responsibility for compliance with the LAA always remains with the Lessee of the head-lease (in this case, the pastoral lease).

AUTHORITY AND DELEGATIONS

The Board has the authority to approve (or not to approve) a pastoral lease being worked as two or more pastoral units (section 108(3)).

The Minister has the authority to approve (or not to approve) the subleasing of a pastoral lease (section 134). In some cases, this power has been delegated, but in all cases the Minister retains over-riding authority.

If the sublease would result in the effective division of the land under the lease into parts with different occupiers (e.g. a sublease over part of a pastoral lease) then the Minister must not approve the sublease unless the Board is satisfied that each part will be capable, when fully developed, of carrying sufficient stock to enable it to be worked as an economically viable and ecologically sustainable pastoral business unit.

Certain staff of the Department of Planning, Lands and Heritage, have delegated authority from the Minister to approve (or not to approve) applications for subleasing under section 134 of the LAA.

POLICY IMPLEMENTATION GUIDELINES

The following apply when subleasing a pastoral lease:

- (a) The written approval of both the Minister (or their delegate) and the Board must be obtained to lease part of a pastoral lease to a third party (i.e., subleasing).
- (b) The Board's recommendation must accompany the sublease application to the Minister (or their delegate).
- (c) The pastoral leaseholder and/or sub-lessee (if applicable) must provide written explanation to the Board about why they are seeking to sublease a part of the pastoral lease (section 108(1)).
- (d) The written permission of the Board must be obtained for two or more occupiers to operate a pastoral lease as multiple business unit (section 108(3)).
- (e) The pastoral leaseholder must ensure the proposed sub-lessee is aware of the requirements of a pastoral lessee under the LAA, particularly Part 7, Division 4 – Conditions of a pastoral lease.
- (f) A sublease can not be inconsistent with the pastoral lease (the head lease). Therefore:
 - Land under a sublease must only be used for pastoral purposes or as permitted under a permit issued under Part 7, Division 5 of the LAA.
 - The sub-lessee must abide by the conditions contained in the pastoral lease, the LAA and any directions or notices issued by the Board for the area of land in the sub-lease.
 - The term of a sublease cannot be longer than the term of the pastoral lease (the head lease).
- (g) The pastoral leaseholder is to acknowledge in writing on making the application to sublease that the pastoral leaseholder, and **NOT** the sub-lessee, remains accountable to the Minister and the Board for the entire pastoral lease. Therefore, any breaches of the LAA by the sub-lessee will be the responsibility of the pastoral leaseholder.
- (h) The pastoral leaseholder is to ensure the sub-lessee records and maintains adequate records to enable the pastoral leaseholder to provide the Board with a consolidated 'Annual Return of Livestock and Improvements' by 31 March of each year, as required under section 113 of the LAA. This should be noted in the sublease agreement.
- (i) The pastoral leaseholder remains the primary contact point for the Board for all matters pertaining to the land administration and operation of the lease. This includes for the payment of rent; submission of signed documents required by the Board; correspondence in relation to rangeland management; and formal advice of lease contact detail changes.
- (j) An assignment clause must be included in the sublease clearly stating that the sub-lessee may not assign or otherwise dispose of their interest in the sublease without the pastoral leaseholder first obtaining the approval of the Minister. Failure to obtain the approval of the Minister constitutes a breach of the LAA and a penalty may apply.
- (k) For a sublease to be recognised as valid it must be registered on the certificate of Crown land title for the pastoral lease (in accordance with section 19 of the LAA). This should be done at Landgate as soon as practicable from the date of the granting of Ministerial approval.
- (l) Where a Board approved management plan is in place, the pastoral leaseholder must ensure that the sub-lessee is aware of commitments made under that plan and that any departure from the plan will require the approval of the Board. The lessee must ensure that the sub-lessee complies with the approved plan as it applies to the subleased area.

- (m) Permits held by the pastoral leaseholder are not transferable to a sub-lessee, nor can a sub-lessee be granted a permit under Part 7, Division 5 of the LAA.
- (n) A head lessee must document in the agreement with a sublessee the access arrangements to a public road. The Board cannot recommend the creation of a new, standalone pastoral business unit that does not have legal access to a public road.
- (o) The Board will consider the Viability and Sustainability of Pastoral Leases policy when providing written approval for a part sublease to the Minister (sections 108(3) and 134(4) of the LAA).
- (p) A sublease is not an agistment. An agistment refers to the temporary grazing of third-party stock, for example in times of drought or after a damaging weather event. Written permission from the Board is not required for an agistment.

WRITTEN APPLICATIONS FOR SUBLEASING SHOULD BE DELIVERED TO:

Department of Planning, Lands and Heritage
 Land Use Management
 Locked Bag 2506,
 Perth WA 6001

or email: proposals@dplh.wa.gov.au

POLICY / LEGISLATIVE BASE

Land Administration Act 1997

Specifically sections 108(1), 108(3) and 134:

S.134 Transfer, mortgage etc. of lessee's interest, ministerial approval of

- (1) With the Minister's approval in writing, but not otherwise, a pastoral lessee may –

- (a) transfer to another person; or
- (b) create a mortgage or charge over

the lessee's interest in the pastoral lease, or any part of that interest, including any sublease, licence or profit a prendre.

S.108 Pastoral lessee's duties as to leased land

- (1) A pastoral lessee must, to the satisfaction of the Board, at all times manage and work the land under the lease to its best advantage as a pastoral property.
- (3) Except with the written permission of the Board, the land under a pastoral lease must be worked as a single pastoral unit.

Copies of the Land Administration Act 1997 are available on the Western Australian Legislation website: [WALW – Land Administration Act 1997 - Home Page \(www.legislation.wa.gov.au\)](http://www.legislation.wa.gov.au)

RELATED DOCUMENTS

- Pastoral Lands Board Guideline – Development Plan and Management Plan Guideline and Templates
- PLB Policy Viability and Sustainability of New Standalone Pastoral Leases
- Landgate Sub-lease Registration Form - L2C-LAA 1065 - (found at: www.landgate.wa.gov.au using the 'Search' tool)

FURTHER INFORMATION

Department of Planning, Lands and Heritage

Email: plb@plb.wa.gov.au