

# **DISCUSSION PAPER**

**REVIEW**

**OF THE**

**PASTORAL LAND ACT 1992**



**Northern Territory Government**

Department of Infrastructure, Planning and Environment

**July 2004**

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## **1. Why review the Pastoral Land Act?**

The *Pastoral Land Act* has now been in operation for almost 12 years, and it is timely to review its effectiveness to determine whether it meets the interests of government, pastoral lessees, community and key stakeholders.

Various limitations have been identified over the past decade, including the administration of the non pastoral use provisions (Part 7) and the declaration of access routes through pastoral land (Part 6).

Departmental legal officers have identified amendments required to the *Pastoral Land Act* to correct technical irregularities (as detailed in section 5.14 of this paper).

In July 2002, the Productivity Commission released a research paper entitled *Pastoral Leases and Non-Pastoral Land Use*. This paper reviewed pastoral lease arrangements across jurisdictions in Australia and the extent to which they affect the emergence of non-pastoral land uses. It suggested that pastoral lease administration processes typically constrain the emergence of non-pastoral land use. Although it can be argued that the existing provisions of the *Pastoral Land Act* do not constrain non-pastoral use, the then Minister for Lands and Planning, the Hon Kon Vatskalis, directed that the *Pastoral Land Act* be reviewed in light of the Productivity Commission's paper.

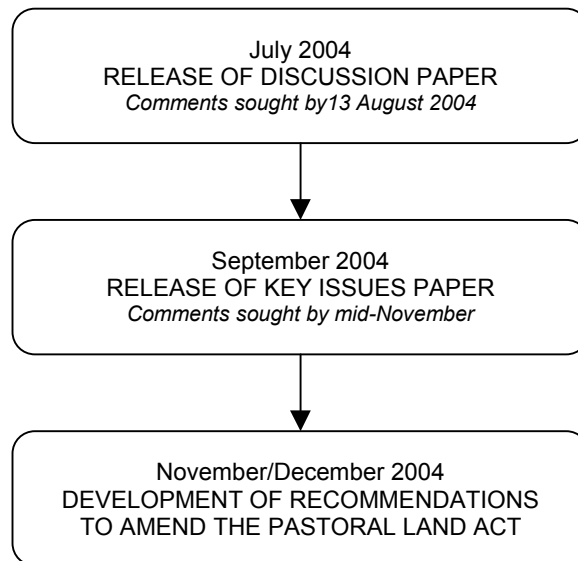
## **2. Purpose of this Discussion Paper**

The purpose of this discussion paper is to stimulate and promote discussion regarding the effectiveness of the *Pastoral Land Act* and possible legislative amendments & amended processes that may be available to improve current practices for pastoral lease administration and management of the Northern Territory's pastoral estate.

The Northern Territory Government is committed to consult with all stakeholders, and is keenly interested to obtain views, comments and suggestions on both the issues identified in this paper as well as on any other matter relating to the operation of the *Pastoral Land Act*.

Issues raised during this initial consultation process will be further discussed in an Issues Paper. It is anticipated that the final Issues Paper will be released during September 2004. Interested parties may register to be kept informed about progress with the review. Workshops and meetings can be arranged with relevant departmental officers throughout the review process to further discuss issues that may be raised.

A proposed time line for the review process is outlined below.



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**Please have your say!**

**Submissions on this discussion paper close 13 August 2004**

### **3. Background to Pastoral Land Administration in the Northern Territory**

The *Pastoral Land Act* provides for the conversion and granting of title to pastoral land and the administration, management and conservation of pastoral land.

There are currently 217 pastoral leases in the Northern Territory covering approximately 619,000 km<sup>2</sup>, which is around 46% of the land area of the Territory.

A pastoral lease is granted over Crown land for pastoral purposes. Pastoral purposes primarily refers to the grazing of stock for sustainable commercial use. Ancillary uses are also allowed.

Eighty four percent (182) of pastoral leases are perpetual pastoral leases with a continuous term. The remaining sixteen percent (35) pastoral leases are term leases with a requirement to develop infrastructure such as fencing, waters and yards. The lessee of a term pastoral lease may apply to convert the lease to perpetual tenure following completion of development and compliance with the term lease conditions.

All pastoral leases are subject to reservations (minerals, timber, and traditional Aboriginal access) and conditions relating to land management. Pastoral lessees are required to take all reasonable measures to conserve and protect features of environmental, cultural, heritage or ecological significance. Pastoral lessees have a general duty to carry out the pastoral enterprise in such a way as to prevent degradation of the land.

Pastoral leases are subject to an annual rent, which is calculated as a percentage of the unimproved value of the leased land. Rents are currently set at 2% of the unimproved value.

### **4. The Existing Legislation**

The *Pastoral Land Act* commenced on 26 June 1992 following an extensive review of the Pastoral Land Administration System in the Northern Territory. Prior to 1992, pastoral leases were administered under the *Crown Lands Act*, rather than tenure specific legislation. The new legislation was developed in consultation with key stakeholders, including the NT Cattlemen's Association, the NT Land Board (the predecessor of the Pastoral Land Board) and environmental groups.

The Pastoral Land Administration System prior to 1992 focussed on the development of pastoral property infrastructure and herd numbers and imposed prescriptive covenants on pastoral lessees.

The *Pastoral Land Act* provided a new direction for pastoral land administration with an emphasis on cooperative landcare and management.

The Objects of the Act are:

- (a) to provide a form of tenure of Crown land that facilitates the sustainable use of land for pastoral purposes and the economic viability of the pastoral industry;
- (b) to provide for –
  - (i) the monitoring of pastoral land so as to detect and assess any change in its condition;
  - (ii) the prevention or minimisation of degradation or other damage to the land and its indigenous plant and animal life; and
  - (iii) the rehabilitation of the land in cases of degradation or other damage;
- (c) to recognise the right of Aborigines to follow traditional pursuits on pastoral land;
- (d) to provide reasonable access for the public across pastoral land to waters and places of public interest; and
- (e) to provide a procedure to establish Aboriginal community living areas on pastoral land.

The *Pastoral Land Act* also:

- Provided an accelerated conversion of term pastoral leases (which had reached a required minimum level of development) to perpetual tenure within 12 months of commencement of the new legislation.
- Introduced land management conditions, rather than prescriptive covenants requiring minimum stocking levels and infrastructure development.
- Established a new Pastoral Land Board with responsibility for pastoral land monitoring and management, reporting to the Minister on the condition of pastoral land and determination of clearing applications and applications for non-pastoral use (amongst other functions).
- Provided a public right to be on perennial natural waters including the sea on or surrounding a pastoral lease including a right to camp within prescribed distances for a period up to 2 weeks.
- Introduced mechanisms for nomination by the Pastoral Land Board of public access routes across pastoral land to waterways and nomination by the Minister of public access routes across pastoral land to features of public interest.

## 5. Issues Identified for Discussion

### 5.1 Non pastoral use of Pastoral Land and diversification

It is a condition of all pastoral leases that the land will only be used for pastoral purposes. Pastoral purposes is defined in the *Pastoral Land Act* as:

*“the pasturing of stock for sustainable commercial use of the land on which they are pastured or agricultural or other non-dominant uses essential to, carried out in conjunction with, or inseparable from, the pastoral enterprise, including the production of agricultural products for use in stock feeding and pastoral based tourist activities such as farm holidays, but does not include a use which, under section 91, is declared by the Board not to be a use for pastoral purposes.”*

A lessee may apply to the Pastoral Land Board for permission for a non pastoral use. Such permission is personal to the lessee, and is not transferable with the lease. Permission can only be granted for a maximum period of five years.

The Minister may approve a sub-lease of pastoral land for a prescribed purpose, which includes commercial tourism.

No new proposals for non pastoral use were considered between 1995 and 2002 following Ministerial direction pending the resolution of Native Title processes. This direction was revoked in November 2002, when procedures consistent with the *Native Title Act* were developed to allow the grant of a non pastoral use approval.

In 1993 the Pastoral Land Board made a policy submission to the then Minister recommending that Government consider amendments to the legislation to:

- Clarify the definition of “pastoral purposes” to clearly outline categories of uses permitted under the definition and those requiring approvals from the Board.
- Enable third party involvement in non pastoral uses.
- Recognise that it would not always be appropriate to excise land for non pastoral uses and that approvals should be able to be extended beyond the five year maximum set in the legislation.
- Formalise a fee formula for non pastoral use approvals. The Board considered individual valuations would be more equitable than a set prescribed fee. It recommended an annual fee be calculated from a prescribed formula at a set percentage of the difference between the value of the land for the non pastoral use purpose and the pastoral value of the land. The Board suggested the same percentage rate used for pastoral lease rents could be adopted.
- Allow for a more appropriate form of tenure for areas to be excised from pastoral leases for diversification/non pastoral use, so that the land could be easily reincorporated into the pastoral lease should the project fail in the future.

The Board also requested preparation of comprehensive guidelines to direct the Board in determining non pastoral use applications.

Following the introduction of the Commonwealth *Native Title Act* in 1993 and uncertainties regarding native title implications, these proposed amendments did not proceed. The Wik decision in December 1996 and amendments to the *Native Title Act* in September 1998 clarified many uncertainties, and procedures are now in place to process development proposals on pastoral leasehold land. Nevertheless, it is recognised that any amendments to the non pastoral use provisions will still need to address native title issues and comply with the *Native Title Act*.

Similarly, a review of these provisions should also address findings of the July 2002, Productivity Commission research paper: *Pastoral Leases and Non-Pastoral Land Use*.

## 5.2 Access to Pastoral Land (waterways and features of public interest)

The *Pastoral Land Act* provides that a person has the right to be on perennial natural water (including the sea) on or bordering pastoral land, without the specific permission of the pastoral lessee. This includes a right to camp for up to two weeks within 50 metres of the bank, with exclusions relating to proximity of the homestead, dams and stock water points. The public also has the right of navigation over the sea and waters of the intertidal zone of rivers under common law.

The *Pastoral Land Act* empowers the Pastoral Land Board to nominate an access route across pastoral land for the public to gain access to perennial water. It also empowers the Minister to declare an area of pastoral land to be a feature of public interest and to nominate a route for public access.

To date there have been no nominations of public access routes across pastoral land to provide access to waterways or features of public interest.

The Pastoral Land Board has reported that the access provisions are an inappropriate mechanism to resolve public access through pastoral land. In particular, the Board reported that the provisions did not address the following matters:

- responsibility for the construction and maintenance of suitable roads;
- construction of boat ramps;
- provision of public facilities;
- collection of garbage;
- increased maintenance responsibilities to pastoral lessees;
- policing of persons accessing pastoral land; and
- public liability.

The Board suggested that other avenues be investigated to provide public access, such as the acquisition of public road reserves and the construction of suitable facilities.

Another mechanism, which has been used successfully in the NT, is a negotiated access agreement with contractual arrangements for road construction, fencing and maintenance.

The provision of reasonable access for the public across pastoral land to waters and places of public interest was a major new initiative of the *Pastoral Land Act*. The Government is also committed to providing increased access for recreational fishing. However, the existing provisions of the *Pastoral Land Act* have proven to be ineffective, and it will be a key challenge of this review to determine a workable alternative to meet government and community expectations whilst balancing the valid concerns of pastoralists.

### 5.3 Effectiveness of Remedial Provisions

The Pastoral Land Board may require submission of a remedial plan if it is of the opinion that pastoral land has been degraded (section 76). Failure to lodge a remedial plan, or to implement an approved remedial plan, is a breach of conditions of the pastoral lease. The Minister has powers under section 42 of the Act to take action in respect of degraded land, including destocking and other rehabilitation works.

The review process will consider whether the current remedial provisions are effective, and whether the failure to comply with remedial provisions should be an offence, rather than a breach of lease conditions. The *Soil Conservation and Land Utilization Act* is currently being reviewed. Consistency with that legislation will also need to be considered.

### 5.4 Major development works on Pastoral Leases

Other than native vegetation clearing, there are no development controls under the *Pastoral Land Act* for major development works on pastoral land if the land is to be used for “pastoral purposes”. There is no approval mechanism for improved pasture species, provided that no native vegetation clearing is involved. Activities that might be considered major developments include pasture ponding banks, dams and irrigation development, and extensive areas of improved pasture.

Such developments have the potential to significantly impact on biodiversity by changing the natural landscape. There is also risk for land degradation to occur if works are not carried out appropriately.

The review of the *Pastoral Land Act* will consider whether there is a need for development controls for major development on pastoral land.

### 5.5 Clearing on Pastoral Land and consistency with Native Vegetation Clearing Controls.

It is currently a condition of all pastoral leases in the Northern Territory that the lessee will not clear any pastoral land except in accordance with the written consent of the Pastoral Land Board, or guidelines, if any, published by the Board (section 38(1)(h) of the Act).

The Board has published guidelines requiring lodgement of a clearing application, except for clearing for fixed improvements, selectively removing noxious weeds, or removing woody weeds over areas less than 10 ha in areas surrounding fixed improvements. Such clearing must still abide by the guidelines, or may be considered a breach of lease conditions.

Revised guidelines approved in March 2004 introduced public notification and assessment processes consistent with that utilised under the Native Vegetation Clearing controls introduced under the *Planning Act*.

Identified issues for discussion are:

- Whether clearing controls for pastoral land should remain within the *Pastoral Land Act* or be included under controls for land Territory-wide under the *Planning Act*.
- If clearing controls remain under the *Pastoral Land Act*, whether non compliance with the Board's guidelines, such as unauthorised clearing, or clearing not carried out in accordance with a clearing permit, should be an offence with monetary penalty rather than a breach of lease conditions.

## 5.6 Review of Offences and Penalties

Offences outlined in the *Pastoral Land Act* are subject to expressed monetary penalties. Under section 40, the Minister may issue a notice requiring an explanation of why the lessee has not complied with a lease condition, and further notice directing compliance within a specified time. Failure to comply as directed is an offence.

Offences included in the *Pastoral Land Act* have not been reviewed since introduction of the legislation in 1992, and are expressed as a specified amount.

The *Penalty Units Act 1999* introduced a system of prescribed penalty units, which are updated periodically. The review will consider whether specified penalties should be introduced for such offences as clearing without permit, failure to implement a remedial plan, unauthorised works or land use. At present, these matters are handled as a breach of lease condition. Consideration will also be given to whether certain breaches of the *Pastoral Land Act* should be regulatory offences, thereby eliminating the need to prove intent.

## 5.7 Powers of the Minister to Consent to the Transfer of Pastoral Leases

Under the *Pastoral Land Act*, the Minister's approval (or consent) is required to transfer or sub-let a pastoral lease. Guidelines have been developed for consideration of pastoral lease transfers. These require details of the intending purchaser including other interests in NT pastoral lands, relevant background and an acknowledgment that the lessee is aware of all lease conditions.

Identified issues for discussion are:

- Under what circumstances should the Minister not consent to transfer a pastoral lease?
- Should suitability of the intending purchaser be a matter for consideration? If so, what defines a suitable pastoral lessee?
- Should land condition issues be considered as part of the consent to transfer process?
- Should the intending purchaser be required to acknowledge any identified land condition issues prior to purchase? If so, should the intending purchaser be required to submit a management plan to address land condition issues?

- Should the Pastoral Land Board have a clearly defined role in the consent to transfer process?
- Should the purchaser be required to demonstrate the financial capability to develop the lease (if an undeveloped term lease) and to manage the lease effectively?

## 5.8 Minimum requirements for grant of a Pastoral Lease and provisions relating to subdivision

The subdivision provisions of the *Pastoral Land Act* require the Pastoral Land Board to consider “whether the resultant parts of the proposed subdivision are capable, individually, of supporting sustainable commercial pastoral enterprises”.

As development in the Northern Territory continues there may be pressure to subdivide pastoral leases for more intensive land use. It will be necessary to evaluate each proposal to determine whether the proposed development is ecologically sustainable.

There has been some debate whether “sustainable commercial pastoral enterprise” refers to both the ecological sustainability of the proposed land use and the commercial viability of the pastoral enterprise.

Consideration could be given to amending the current provisions to include both economic viability and ecological sustainability. This would also apply to partial surrender of pastoral leases, to ensure the remnant pastoral lease is sustainable

## 5.9 Establishment of the Pastoral Land Board: powers and functions, composition, qualifications for membership

The Pastoral Land Board was established under the *Pastoral Land Act* and has a Chair and four other members. There is provision for appointment of an alternate member for each of the four members. These provisions have not been used since the first term of the Board, as alternate members were never called on to act as members. Under the current provisions it is specified that two of the five members require experience as pastoralists. There is no other expertise specifically required to be eligible for appointment as a board member.

The functions of the Pastoral Land Board include reporting to the Minister on land condition, considering applications for subdivision, establishment of a pastoral land monitoring system, addressing land condition issues and implementation of remedial plans. Other powers under the *Pastoral Land Act* include determination of clearing applications, determination of applications for non pastoral use, nomination of access routes, and consideration of applications to convert term leases to perpetual tenure.

Identified issues for discussion are:

- Should the Pastoral Land Board remain as the responsible body for pastoral land in the Northern Territory?
- Are the current powers and functions of the Pastoral Land Board appropriate?
- Is the current composition of 5 members appropriate, or should the membership be increased?

- What skills and qualifications and other experience are appropriate for appointment of members to the Board? Expertise in areas of lease administration, ecology, pastoral management, land and water resource management, soil conservation, animal husbandry, conservation and management of biodiversity are all considered relevant. Should the *Pastoral Land Act* define qualifications for appointment of members?
- Should the provisions for appointment of alternate members be repealed?

## 5.10 Pastoral Land Appeal Tribunal

Part 9 of the *Pastoral Land Act* provides for the establishment of a Pastoral Land Appeal Tribunal. This Tribunal has powers to determine appeals lodged against any decision or action of the Pastoral Land Board, decisions of the Minister in relation to breach of lease conditions and certain decisions of the Minister or the Valuer General in relation to valuation of improvements under section 121.

Regulation 25 of the *Pastoral Land Regulations*, empowers the Minister to appoint a panel of experts from which the President of the Tribunal shall constitute the Tribunal for each appeal. There have been no appeals lodged to the Pastoral Land Appeal Tribunal since commencement of the *Pastoral Land Act*.

The Pastoral Land Appeal Tribunal has never been constituted and a panel of experts has not been appointed.

Identified issues for discussion are:

- Whether there is a need for a separate Tribunal.
- Should the powers of the Pastoral Land Appeal Tribunal be incorporated with the Land and Mining Tribunal?
- What decisions or actions of the Pastoral Land Board and/or Minister should be subject to appeal?

## 5.11 Pastoral Land Regulations

The *Pastoral Land Regulations* are subordinate legislation prescribing matters as required by the *Pastoral Land Act* to give effect to provisions of the primary legislation. Matters covered by the regulations include proceedings of the Pastoral Land Board, standard provisions of pastoral leases, regulations of persons on pastoral land and licenses to take things from pastoral land.

The review of the *Pastoral Land Act* should also review the effectiveness of the *Pastoral Land Regulations*, and any consequential amendments to the Regulations as a result of amendments to the Act. For example, Part 6 of the *Pastoral Land Regulations*, relates to licences, and it has been recommended that section 84 of the *Pastoral Land Act*, relating to licences, should be repealed. If this proceeds, the Regulations should also be amended. Similarly, Regulations 14 and 15 relate to regulation of persons accessing pastoral land under Part 6 of the Act. These regulations may require consequential amendments if the access provisions are to be amended.

## 5.12 Access through Pastoral Land to Aboriginal Land.

The *Pastoral Land Act* provides a mechanism to provide access through pastoral land to Aboriginal land as described in Part 2 or 3 of Schedule 1 of the *Aboriginal Land Rights (Northern Territory) Act 1976*. There may be cases where other Aboriginal land has no legal access. The current provisions should be reviewed to consider whether they are still appropriate, and whether other Aboriginal lands should also be included.

## 5.13 Part 8 – Aboriginal Community Living Areas

Part 8 of the *Pastoral Land Act* relates to procedures and mechanisms for the grant of Aboriginal Community Living Areas within pastoral leases. These provisions were previously contained within the *Crown Lands Act*.

In April 2002, the Central Land Council sought a major review of the Aboriginal Community Living Areas provisions, stating the legislation is flawed, the criteria for applicants is inappropriate, the process is cumbersome and inconsistent with the *Native Title Act*. The Northern Land Council has also raised concerns with the provisions. In October 2002 agreement was reached to allow granting of titles for around 22 community living areas. Although this has to some degree addressed some of the concerns raised by the Land Councils, a review of these provisions may still be warranted.

## 5.14 Technical Corrections to existing provisions

Various technical irregularities of the *Pastoral Land Act* have been identified since the legislation was introduced in 1992. Further corrections and anomalies may also be identified during this current review.

Amendments identified to date are outlined below:

### **Appointment of Acting Chairman of the Pastoral Land Board**

Amend section 19(1) so that an acting Chairman of the Pastoral Land Board may be appointed by the Minister from the members of the Board in the event of the death of the Chairman or other unforeseen eventualities.

### **Exceptions to requirement that pastoral land may only be used for pastoral purposes**

Amend section 38(1)(d) so as to recognise that the ability to sub-let pastoral land for a prescribed purpose pursuant to section 68(5) is an additional exception to the lease condition that pastoral land may only be used for a pastoral purpose.

### **Taking of timber etc**

Amend section 38(1)(m) so that a pastoral lessee may only take trees, timber, stone, sand, gravel or soil occurring on the leased land, without a licence to do so, if those materials are to be used on or in connection with the land.

### **Extension of term pastoral leases**

Amend section 49 so that the period in which a pastoral lessee may apply for an extension to the term of a non-perpetual pastoral lease is limited to the period between 4 years and 2 years before the expiration of the lease.

<b>Sub-leases for prescribed purposes and non-pastoral uses to be excluded from consideration of UCV</b>	Amend section 55(4) so as to exclude a sub-lease for a prescribed purpose made pursuant to section 68(5) and a permission granted for a non-pastoral use pursuant to section 88 from consideration when the unimproved value of pastoral land is determined by the Valuer-General for rental purposes.
<b>Fee for sub-leases for non-pastoral purposes</b>	Amend section 7 and section 68(5) so that an annual fee for a sub-lease of a pastoral lease, for a non-pastoral purpose permitted by the Regulations, may be calculated from a prescribed formula at 5% of the difference between the value of the land for the prescribed sub-lease purpose and the pastoral value of the land.
<b>Exclusion of public camping rights</b>	Amend section 79(7)(c) so that the word ‘wildlife’ is omitted.
<b>Licensing to take plant material etc</b>	Repeal section 84 thereby leaving exclusive powers for the granting of licences to take plant material, stone, sand, gravel or soil from pastoral land to existing provisions within the <i>Territory Parks and Wildlife Conservation Act</i> .
<b>Appeals against decisions of the Valuer-General</b>	Amend sections 119 and 121 by omitting all references to the Valuer-General.
<b>Right to appeal against a decision of the Minister relating to payment of value of improvements</b>	Amend section 119 by including a former pastoral lessee as a person who may appeal against a decision of the Minister made pursuant to section 51.

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