



Summary Paper

Proposed Amendments to the Pastoral Land Act for the Northern Territory 2011

Community consultation closes 31 May 2011.



Reasons for amendment

The objectives of the *Pastoral Land Act* (the Act) when passed in 1992 were in part to provide a form of tenure of Crown land that facilitated the sustainable use of land for pastoral purpose and the economic viability of the pastoral industry and to provide for the prevention or minimisation of degradation of or other damage to the land and its indigenous plant and animal life.

Concerns regarding the suitability of the Act to manage contemporary pastoral issues were raised by the Productivity Commission research paper *Pastoral Leases and Non-Pastoral Land Use*, released in July 2002. The report suggested that pastoral lease administration processes typically constrain the emergence of non-pastoral land use. The then Minister for Lands and Planning directed that the Act be reviewed.

Since the review of the Act commenced and the issues were canvassed, the Territory Government has announced the introduction of a *Northern Territory Climate Change Policy* and a number of conservation initiatives, including the Territory Eco-link initiative.

The proposed amendments to the Act are consistent with these policies, ensuring the ecologically sustainable management of land held under pastoral tenure and that due recognition is paid to the conservation value of the land whilst acknowledging its primary use for primary production. Furthermore, proposals to replace present land clearing controls with best practice process built on new legislation to manage native vegetation; and the development of proposals to make land clearing on pastoral lands subject to controls under the Northern Territory Planning Scheme, have since been announced.



The review process

A Steering Committee was formed to undertake a review process that involved extensive consultation with stakeholders, the public and industry on a range of issues from 2004 to 2006.

A Recommendation Paper, taking into account submissions received from stakeholders, the public and industry was released in June 2006 for further stakeholder comment and discussion. A series of consultative forums were held in the major centres to facilitate feedback. Inter-Government workshops and discussions were held to ensure that the views of all areas in the Department of Natural Resources, Environment, The Arts and Sport (NRETAS), Department of Planning and Infrastructure (DPI) and the Department of Resources (DoR) were canvassed.

To provide a stronger platform for the delivery of Government policy, the Steering Committee recommendations provided the basis for the preparation of drafting instructions, particularly in the areas of sustainable pastoral land management, conservation management, clearing of native vegetation on land held under pastoral tenure, and appropriate mechanisms for the sustainable use of pastoral land for non-pastoral purposes such as agriculture, horticulture, tourism or private conservation.

Proposed amendments

The recommended amendments of the Act provide strengthened penalty provisions, the opportunity to utilise pastoral land for conservation purposes, the requirement for approval to carry out major developments and the introduction of a single consent authority for clearing of native vegetation.

The recommendations deliver expanded opportunity to address the concerns raised by the Productivity Commission, while retaining the primary objective of the Act to provide Crown land for sustainable pastoral purposes and the economic viability of the pastoral industry and to ensure that damage to the land and its native plant and animal life is minimised.

The retention of the Pastoral Land Board provides an independent industry focused advisory body.

Retention of the Pastoral Land Board

Under the current provisions, the Pastoral Land Board is the consent authority for only two provisions, non-pastoral use and land clearing. It is proposed the Board be retained with amended functions and powers under Sections 29 and 30 of the Act and reporting to the Minister for Natural Resources, Environment and Heritage, and Agency responsible for the *Soil Conservation and Land Utilisation Act*. The Board would have an advisory role only and no longer have consent authority powers separate to Government.

In the proposed advisory role, the Board would provide recommendations and advise the Minister on land management policy relating to the pastoral industry, develop guidelines for Ministerial endorsement and commission research into any matters that it considers relevant to the pastoral industry. The Board currently provides recommendation on matters relating to subdivision, conversion of tenure and other matters as requested by the Minister. The current funding and administrative arrangements for the Board are consistent with those of an advisory body.

Land clearing provisions

Removing the land clearing provisions from the Act would place all native vegetation management under a single consent authority ensuring consistency of decision making across all forms of tenure.

Currently clearing on land held under pastoral tenure subject to an Interim Development Control Order, requires the consent of both authorities. The proposed amendments will remove the potential for such anomalies.



The Board could continue to be involved in the assessment process to utilise the knowledge and skills it has in land management. The Board could take an advisory role and all applications relating to pastoral land could be forwarded to it for recommendation and comment. The Board is well versed in assessing clearing applications involving larger areas than those currently processed under the *Planning Act*.

Non-Pastoral Use and Major Developments

“Non-Pastoral Use” of the Act is to be renamed “Development Permits” and expanded to provide for all activities on land held under pastoral tenure where consent to carry out an activity is required. This will provide for increased opportunity for diversification and acceptance of alternative land uses, including conservation, within a predominantly pastoral landscape.

Approval would be required to carry out any activity which is likely to significantly modify landscape health at the particular site, or off-site. Modification of landscape health would include significant changes to overland water and sediment movement, landscape function, increased risk of soil erosion, increased risk of weed invasion or a significant increase in productive capacity that has major impacts on biodiversity values.

Such activities may include the construction of large scale irrigation projects or ponding banks. The introduction of non-native pasture species, if not undertaken as part of land clearing, will be subject to specific approval controls if the development falls within the proposed new definition of “developments requiring consent authority approval” as it will significantly modify landscape health.

The amendments expand the definition of “Non-Pastoral Use” to include conservation purposes, remove the time limitation on non-pastoral use (currently renewable annually), allow third party involvement and introduce an annual fee. The fee is to be calculated by a prescribed formula at a percentage of the difference between the value of the land for non pastoral purpose and the pastoral value of the land as determined by the Valuer General. Non-pastoral use fees are to be levied for the non-pastoral activity and are not a form of rent.

Major developments that are not directly related to the use of the land will not be considered for non-pastoral use. Developments that require major infrastructure such as large scale tourist accommodation will still require excision from the lease. The amendments are intended to provide opportunity for pastoral lessees to diversify their income streams, in conjunction with allowable pastoral activities. The amendments provide a basis for long term investment as all permits will be registered on title and transfer with the lease. The proposed rigorous assessment of major development works will ensure that all developments are sustainable and do not adversely impact landscape health.

Public access

The current provisions of the Act relating to access across pastoral land whereby the Board declares a route for public access across pastoral land have proven to be unworkable. Landholders were unwilling to grant access due to issues such as road maintenance, property security and public liability.

The proposed amendments provide a legislative mechanism for the Minister for Natural Resources, Environment and Heritage to negotiate public access across pastoral land and to declare an access route if necessary. The amendments provide public liability cover, provisions for closure of access (due to mustering activities, seasonal conditions and road conditions), construction of adequate roads and associated access infrastructure and limitations of visitor numbers.

The most significant change to the proposed amendment is that government will assume public liability. It is not intended that the access provisions will allow unfettered public access; the rights of the pastoralist to operate a pastoral enterprise and to protect their financial investment will be recognised. Agreements will be formal and recorded on title.

Aboriginal community living areas

The section of the Act dealing with Aboriginal community living areas is not being reviewed at this stage, as any issues will need to be addressed in a broader framework of Indigenous policy. It will be necessary to engage the numerous internal and external stakeholders in any review of this section, due to the complexities involved and links to other legislation, including changes introduced to both Northern Territory and Commonwealth policy and law.

Enforcement and regulation

To ensure that pastoral leases are managed and operated in compliance with the provisions of the Act, its lease terms and conditions, permit conditions issued under the Act, provision for monetary penalties for offences committed against the Act and powers to order action to be taken have been introduced. Part 11AA of the criminal code applies to an offence committed against the Act. The Minister for Natural Resources, Environment and Heritage or their delegate has the power to issue orders, directions and request information relating to activities or circumstances of a pastoral lease, failure to comply or provide is subject to prosecution in a court of law and payment of prescribed penalties. To maintain currency monetary penalties are charged as penalty points, which are regularly reviewed and reset.

Decisions relating to a permit issued for a non-pastoral use or a major development are subject to review by certain parties as prescribed in the Act, this includes parties who have lodged a submission in response to an advertised application.

Community participation in decision making

The proposed amendments also provide for increased community participation in decision making by strengthening the appeal provisions to include provisions to cover treatment of reviews of decisions made under this Act.

The new provision provides increased opportunities to settle matters without a full Tribunal hearing and so reduce costs for both parties. However, if the person seeking the review is not satisfied with the outcome, the matter may proceed to a full hearing.

Further information

The Territory Government is inviting the community to have their say on the proposed amendments to the *Pastoral Land Act*. **Community consultation closes 31 May 2011.** Online submissions are welcome and further information is available by visiting www.nt.gov.au/consult.

You may also seek further information or submit written comments to:

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Submissions must include your name and address and will become public documents published on the Department website. If you would like your submission to remain confidential, please provide a separate written request. Please note, Freedom of Information access requirements will apply to all submissions, even those treated as confidential.