A Review of the Process to Permit Diversification on Pastoral Leasehold Land in Western Australia

A report to the Minister for Agriculture and Food

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Executive summary

Introduction

Throughout its history, Western Australia's pastoral industry has seen periods of significant profitability, particularly up to the 1930s and during parts of the 1950s and 1960s. However, prolonged droughts and declining international wool prices hit the industry hard, particularly from around the 1970s. Schapper (n.d.) reported that in 1993, the Pastoral Wool Industry Task Force noted virtually none of the State's pastoral properties reliant on wool production could generate a positive income, and consequently 30 to 60 per cent would need to leave the industry. He cites Jennings (1979) in concluding that as a result the government was spending more money on servicing the industry than it collected as rent.

The current cost of administering pastoral leases is about $2.2 million per year, made up of:

- running the Pastoral Lands Board (PLB) and the Pastoral Land Business Unit
- vegetation monitoring, control of weeds and pests, pastoral lease inspection and map production by the Department of Agriculture and Food and
- rangeland resource surveys by the Department of Agriculture and Food, and Landgate.

Currently, agriculture in the rangelands contributes around four per cent or $264 million of the State's Gross Value of Agricultural Production. This is generated by 625 businesses, about 300 of which are active pastoral leases and about 300 are horticultural enterprises. The table below shows the value of pastoral production in terms of overall agricultural production in the rangelands.

Industry	Northern Rangelands	Southern Rangelands	Total
Crops* (Horticulture)	$63M	$65M	$128M
Livestock Sales	$98M	$32M	$130M
Livestock Products (Wool)	$ 5M	$43M	$48M

While employment in agriculture and its service industries is important, the mining sector is the major driver of the rangelands' workforce, and it has become increasingly difficult to attract labour due to the competitive advantage of mining as well as the area's remoteness.

The sector confronts a number of other challenges such as climate change, decreasing profitability of the small stock industry, the impact of feral animals such as goats and wild dogs, pest plants such as mesquite, and altered fire and water regimes. Rangeland condition information provided to the PLB by the Commissioner for Soil and Land Conservation in a 2007/08 Pastoral Land Condition Report show that around five per cent is classed as being in poor condition, 25 per cent in poor to fair condition, 41 per cent in fair to good condition, with the remaining 29 per cent in good condition.

In spite of these difficulties, the industry remains the most geographically significant land use in the rangelands covering about 45 percent of its area (and 36 percent of the State). There are 470 pastoral stations made up of 519 pastoral leases covering nearly 90 million hectares

from the Kimberley in the north to the Great Australian Bight in the south. There is a large variation in the size of pastoral stations, with the smallest being 5 816 hectares and the largest 595 322 hectares (average size is 186 763 hectares).

All Western Australian pastoral leases expire on 30 June 2015, having been issued during the last 18 to 50 years. Almost all will be renewed in 2015 for the same term as the current leases, although parts of some will be excluded from renewal. Ninety-four leases will have land excluded for a variety of purposes, including addition to the conservation estate, recreation and tourism, Aboriginal uses and town site expansion. This will represent a reduction of about one per cent in the size of the pastoral estate.

The *Land Administration Act 1997* (LAA) specifies pastoral leases can only be used for 'pastoral purposes' defined as:

a) *the commercial grazing of authorised stock*

b) *agricultural, horticultural or other supplementary uses of land inseparable from, essential to, or normally carried out in conjunction with the grazing of authorised stock, including the production of stock feed; and*

c) *activities ancillary to the activities mentioned in paragraphs (a) and (b).*

However, the LAA makes provision for the PLB to issue permits for clearing land, sowing pasture, agricultural use, tourism supplementary to pastoralism, non-pastoral use of enclosed and improved land, or keeping or selling prohibited stock. This provision was created so pastoralists could implement small scale, 'pastoral-centric' activities to improve viability without triggering future act provisions under the *Native Title Act 1993.*

Therefore, diversification permits can be provided for activities consistent with pastoralism and are not appropriate for large scale changes in land use that effectively see land used for purposes other than pastoralism. It should be noted that permits for non-pastoral activities are also able to be issued; however, it is likely activities under such a permit would constitute a future act requiring native title to be addressed.

Currently, there are 45 diversification permits in existence: 33 are for tourism; one for sowing non-indigenous pasture; six for agriculture; two for horticulture; and, three for aquaculture.

Reviews of pastoral diversification find that while permits provide a transparent mechanism for changing land use, they are somewhat limited. The Productivity Commission (2002, p. 45) argues that this is because they are generally issued for short timeframes and are not transferable with the lease title. Tourism Western Australia has expressed particular, concern about the limits of diversification permits and believes the State is forgoing significant economic development as a result.

In addition, there are almost always several agencies that need to provide approvals for diversification to proceed, which must occur within the constraints of existing legislation. Furthermore, pastoral lease holders perceive the process to obtain permits as onerous and are often frustrated at what they believe is unnecessary 'red tape'. This is compounded by a lack of understanding of what permits can be used for, and of the range of approvals under other legislation that may be required in addition to a permit from the PLB.

The Review

As a result of these and other constraints and concerns, the Minister for Agriculture and Food established a review to examine procedural improvements, and options to fast-track investment and diversification on pastoral leases. The Minister established a senior officers' group of relevant State departments to undertake the review, which in accord with the

review's terms of reference, focused primarily on improving the process to obtain diversification permits. However, in focusing on diversification, the senior officers' group has become aware of a range of other issues regarding rangelands tenure also requiring review and resolution, and consequently has flagged them in Appendix One for the Minister's consideration.

The senior officers' group believes two needs are clear in reviewing the process to permit diversification on pastoral land:

- **State agencies should agree to assess applications within set time frames, and agencies should advise the PLB of target timeframes and information assessment requirements as a basis for developing a comprehensive information package for applicants; and**
- **Applications received by the PLB should be of a standard that allows them to be assessed within the set timeframes.**

In this context, the senior officers' group makes the following recommendations.

Recommendations

Recommendation One

The Government should continue to state its support for business diversification on pastoral land due to the social, economic and environmental benefits it can provide for the State's rangelands.

Recommendation Two

The Department of Regional Development and Lands, in consultation with the PLB, should:

(a) Enhance and improve relevant web pages with regard to information on permits for pastoral and non-pastoral activities.

(b) Update and improve existing permit application information to encourage a stronger focus on appropriate research, business analysis and planning for proposed activities by pastoral lease holders prior to applications being submitted.

(c) In consultation with key agencies, identify information and expertise available to assist pastoral lease holders seeking to diversify their business operations through a permit.

Recommendation Three

The Department of Agriculture and Food should:

(a) Review the NOTPA project to determine future case management needs for supporting agricultural-based diversification on pastoral leasehold land.

(b) Appoint case managers to assist pastoral lease holders develop permit applications for agricultural-based diversification as part of a transition toward building private sector interest in assisting pastoralists diversify their businesses.

(c) Encourage the private agricultural consulting industry to assist pastoralists in developing agricultural-based diversification options for their enterprises.

Recommendation Four

The PLB, and Department of Agriculture and Food should work with Landgate to determine whether the current Interests Enquiry application is suitable to assist the development of diversification permit proposals.

Recommendation Five

> ***As part of the one-stop-shop approach, identify key personnel and/or areas within referral agencies, specifically the Departments of Agriculture and Food, Environment and Conservation, and Water that have a clear understanding of the permit process and can expeditiously deal with required assessments.***

Recommendation Six

> ***The PLB, and the Departments of Agriculture and Food, Environment and Conservation, and Water should establish a steering group to further explore and report to Government on possibilities for further exemptions from external approval, or opportunities for streamlined external approval, for pastoral diversification proposals that could be predetermined to have minimal impacts on matters subject to external regulation (e.g. native vegetation conservation, water resource conservation). The report would include advice on the frameworks to operate in such circumstances to ensure that the purposes of the external regulation processes and enabling legislation are met.***

The senior officers' group is of a view that these recommendations can significantly enhance the process for diversification on pastoral land and address a number of shortcomings that have persisted in recent years. However, it is aware several recommendations will require further work between agencies to detail agreed protocols and processes. As a result the group proposes establishing an inter-agency working group focused on implementation to ensure the recommendations are progressed. The senior officers' group believes an inter-agency group could substantially progress the recommendations within 12 months of the Minister's response to the review.

Furthermore, and as stated earlier, the senior officers' group believes a number of other issues require review, and would add that implementing the above recommendations alone will not facilitate the best use and value for Western Australia's rangeland resources. Other issues such as regional planning to facilitate development, tenure arrangements that encourage investment and support a range of uses and values, as well as reducing pressure on natural resources in the rangelands require further investigation. The group is aware of several national and State reviews highlighting these issues, and recent developments that may be relevant in progressing them, and recommends the issues flagged in Appendix One are investigated further.

Recommendation Seven

> ***The Department of Agriculture and Food should initiate a review and prepare a discussion paper on alternative tenure arrangements in the rangelands that will support a range of values and uses of rangeland resources to provide social, economic and environmental outcomes for the State.***

Explanation of recommendations

Diversification

Recommendations are made in three key areas. First, the policy context in relation to diversification should be clarified; second, 'front-end' changes to the permit process should be implemented, several of which are already being considered by agencies; and lastly, attempts by agencies to reach agreement on issues that frequently arise regarding diversification should be resolved as quickly as possible.

Clear direction

A review of the process to permit diversification on pastoral leasehold land was initiated as the Minister believes it can provide social, economic and environmental returns to the State. In this case it may be prudent to make a clear policy statement about the Government's commitment to diversification in the rangelands due to such benefits, which by way of examples include improving pastoral viability and reducing pressure on fragile ecosystems through intensifying land use.

Recommendation One

The Government should clearly re-state its support for business diversification on pastoral land due to the social, economic and environmental benefits it can provide for the State's rangelands.

The Southern Rangelands Pastoral Advisory Group is preparing such a statement and the senior officers' group believes this could be endorsed by the Government as the State's overarching vision for the rangelands.

In relation to diversification specifically, the statement could include a series of principles and practices to guide proponents and State agencies in developing and assessing applications respectively. The Commonwealth's Development Assessment Forum has developed its *Leading Practice Model for Development Assessment* (2005), which provides guidance on standard practices and levels of assessment for Australia. According to the Forum, a development assessment process incorporating the principles of leading practice should:

- require agencies to develop strategic plans and objectives, policies and codes, and where possible, prescribe development controls that can be applied directly by the assessment body
- minimise the number of referrals to other agencies
- establish 'one-stop shops' to deal with the development assessment processes
- where practicable, delegate decision making to the lowest level of government
- incorporate the maximum use of electronic data exchange, thereby expediting the process, such as digital land information systems; and
- facilitate maximum use of simultaneous, rather than sequential, referrals and assessment.

Each of these is relevant to the process for obtaining diversification permits.

Therefore, the Government should provide explicit statements about the statutory roles of its agencies involved in assessing diversification applications. Relevant agencies are the Department of Regional Development and Lands (DRDL) via the Pastoral Lands Board

(PLB), Department of Agriculture and Food (the Department), Department of Environment and Conservation (DEC), Department of Water (DoW) and Department of Fisheries (DoF). The statutory roles of these agencies are detailed in Appendix Two.

The capacity of agencies to meet their statutory obligations in a timely manner is heavily dependent on the quality of information provided by proponents. In addition, DEC and DoW advise that legislative issues sometimes constrain them from providing decisions back to the PLB until other approvals have been determined.

With regard to timelines for assessments, they can be summarised as:

- PLB requests relevant agencies to respond within 42 days
- DEC aims to assess clearing applications within 90 days
- DoW aims to assess applications for water licences and/or permits within 90 days
- the Commissioner for Soil and Land Conservation assesses impacts in relation to land degradation within 40 days; and
- DoF aims to assess applications for aquaculture licences within six to eight months.

Legislative approvals can occur concurrently rather than sequentially if pastoral lease holders seek approvals in parallel. If approvals are sought at the same time complete assessment is possible within six months, depending on the quality and feasibility of applications. However, this is not the norm and occurs by exception.

Front-end improvements

A key term of reference of the senior officers' group was to investigate establishing a 'one-stop-shop' approach to assessing applications for diversification permits. The group believes such an approach is critical and that the PLB should remain the key point of contact for submitting applications. However, a number of front-end improvements should be initiated.

In the first instance, the senior officers' group finds that applicants seeking permits do not necessarily understand what they can be used for and/or approvals they may require in addition to a permit from the PLB. Information on the PLB's website states that *for most proposed activities, the application process takes around eight to ten weeks. Much of this time is to allow government departments, and native title claimants and their representative bodies to comment on proposals.* However, approvals from other agencies for activities involving native vegetation clearing, water allocation, establishing aquaculture operations and the like have to pass through statutory processes. These often have *Native Title Act 1993 (Cth)* consultation requirements and so obtaining such approvals will routinely take around 90 days or so. Where the proposals are highly contentious or key information is missing, the process can be longer. DEC and DoW in particular advise that these matters cause delays and extend their assessments.

While the Pastoral Lands Business Unit (PLBU) encourages applicants to seek additional approvals in parallel, some are not prepared to do this until the PLB grants a permit. In such cases, permits granted by the PLB include conditions requiring applicants to obtain legislative approvals granted by other agencies. This is generally the case for native vegetation clearing permits and water licences and no activity can occur until additional approvals are granted.

The current permit application assessment process is four to six months, with exceptions, depending on the complexity of the proposal. This includes:

1. Liaison with lessee on permit application quality, additional information if required and preparing documents for referral—up to 28 days.
2. Referral of application and draft conditions of permit to Government agencies—42 days set timeframe (included in this period the lessee is to respond also on proposed draft permit conditions). Section 117 of the *Land Administration Act 1997* (LAA) states the PLB cannot issue a permit unless environmental conservation requirements are satisfied, listing common legislation as well as '*any other written law relating to environmental conservation which is applicable to the land under the lease.*' This section makes it a requirement that additional approvals must be secured by the lease holder.
3. Synthesis and compilation of agency and lessee responses—up to 14 days (may require further liaison with agencies or lessee to clarify feedback received).
4. Presentation to the PLB—up to 28 days (depending on sitting or earliest out-of-session consideration).
5. Post PLB meeting document preparation—up to 14 days.
6. Offer of a permit and conditions requiring the lessee to accept, sign and return to PLBU—up to 28 days (dependent on lessee's response time); and
7. If the lessee accepts the offer of a permit and the conditions, the permit is granted.

It is critical Government agencies provide prospective applicants with a clear understanding of the diversification permit process, including relevant approvals. As a first measure the PLB could provide an information package to pastoralists, outlining the Government's support for diversification, explicit information about approvals required and timelines, and types of diversification activities available, including case studies. Appendix Two outlines the range of assessments that may be required by proponents in order to obtain a permit and could provide the basis for such a package.

Recommendation Two

The Department of Regional Development and Lands, in consultation with the PLB, should:

(a) Enhance and improve relevant web pages with regard to information on permits for pastoral and non-pastoral activities.

(b) Update and improve existing permit application information to encourage a stronger focus on appropriate research, business analysis and planning for proposed activities by pastoral lease holders prior to applications being submitted.

(c) In consultation with key agencies, identify information and expertise available to assist pastoral lease holders seeking to diversify their business operations through a permit.

This approach is consistent with the e-Government Strategy for the Western Australian Public Sector and *Citizen Centric Government—Electronic Service Delivery Strategy for the Western Australian Public Sector*. In the event this extends to electronic lodgement and assessment in the future, it could also give consideration to the electronic Development Assessment (eDA) project, which has developed a National Communication Protocol to facilitate electronic processing of development applications. A version has been nationally adopted as the standard for electronic development assessment via a Council of Australian Governments' decision, stating all jurisdictions agree new tender specifications for electronic development assessment software purchased by Commonwealth, State/Territory and Local Governments will incorporate a National Communication Protocol for transferring

development application information electronically from 1 July 2007. The Commonwealth's Development Approvals Forum is establishing the way forward for eDA to be nationally implemented.

The Department of the Premier and Cabinet is also assessing feasibility of establishing a Statewide Development Approvals Information System (see Appendix Two). While establishing a system may take some time, efforts to streamline diversification should as far as possible be consistent with any Statewide and/or national approach.

While a streamlined approach is crucial, it will have little effect if permit applications received by the PLB are poorly prepared, based on infeasible projects and/or do not deal with required approvals. Evidence provided to the senior officers' group suggests proponents sometimes have ill-conceived and/or poorly planned ideas for which they are seeking a permit. For example, some proposals have been received in handwritten form on a single sheet of paper, whereas others include information not directly related to the application or that is of very low quality. In these circumstances, proponents invariably find they have not provided sufficient information for assessments to be made, need to change their proposals, and discover what is required gradually and as a result develop their proposal in a piecemeal fashion over an extended period. This coupled with a lack of consolidated, up-front information about the permit process can create considerable confusion and frustration.

The Northern Opportunities for Tropical and Pastoral Agriculture (NOTPA) project, managed by the Department, demonstrated that good diversification proposals can be developed with a reasonable level of agency support. The NOTPA project developed a template to guide initial planning in relation to diversification, which could be used as a guide for future applications. In addition, 'case managers' could be identified (initially in the Department) to assist in developing sound applications and overcoming the shortcomings raised above. This would ensure clear and well planned applications are made, which can be assessed more quickly.

However, public investment in case management should be provided on the basis of catalysing private sector interest in assisting pastoralists (and/or other developers in the future) to develop business plans based on diversification. Therefore, the senior officers' group recommends a phased approach to develop the skills required to support broad diversification of enterprises based on rangelands uses and values.

Recommendation Three

The Department of Agriculture and Food should:

(a) Review the NOTPA project to determine future case management needs for supporting agricultural-based diversification on pastoral leasehold land.

(b) Appoint case managers to assist pastoral lease holders develop permit applications for agricultural-based diversification as part of a transition toward building private sector interest in assisting pastoralists diversify their businesses.

(c) Encourage the private agricultural consulting industry to assist pastoralists in developing agricultural-based diversification options for their enterprises.

This recommendation however, requires a word of caution in that the Department of Agriculture and Food should have some discretion in identifying proponents to work with. Potential projects must be able to demonstrate a level of technical feasibility and chance of success to warrant investment of public resources. The Department will need to develop criteria to determine which proponents it should work with.

In addition, the range of permits currently permissible for pastoral purposes includes production of non-indigenous (approved) pastures (s.119); agricultural use (including horticulture) that is 'reasonably' related to the pastoral use of the land (s.120); low-key pastoral-related tourism (s.121); and to keep or sell prohibited livestock (s.122A). Further non-pastoral use of enclosed or improved land (s.122) may be permitted where it is not affected by the 'future act' provisions of the *Native Title Act*. For the range of permits, various Government agencies can provide information and advisory services to pastoral lease holders, including Tourism Western Australia, DRDL, the Department, DEC, DoW, DoF in addition to Regional Development Commissions and the Small Business Development Corporation. Identification of what services and information each Government agency has available will be required to improve permit application quality, which can be facilitated by the PLB via initial contact with applicants.

The senior officers' group's terms of reference also referred to developing an information system of land use options and areas suitable for development based on consideration of biodiversity conservation needs, water resource availability and suitability, Indigenous cultural and spiritual values, and logistics such as infrastructure and labour requirements. The group supports development of such a system and considers it should build on information currently available via the Shared Land Information Platform (SLIP). Through SLIP, Landgate has established an 'Interests Enquiry' on-line application (see http://www.interestenquiry.com), which aims to simplify the process of discovering interests that affect land in Western Australia. To date it has been marketed to the land development and conveyance industry, but also seems a reasonable fit for diversification. However, the data available will need to be improved to address the full requirements of pastoral diversification. This information system could be used by pastoralists and/or case managers within the Department of Agriculture and Food to assist proponents develop proposals.

Recommendation Four

The PLB, and the Department of Agriculture and Food should work with Landgate to determine whether the current Interests Enquiry application is suitable to assist pastoralists develop diversification permit proposals.

Agreement between agencies

Referrals from the PLB to other agencies should always be received by the same areas/branches within those agencies that are familiar with the permit process. This will help avoid delays as staff understand how the permit process works and have the expertise to deal with any internal assessments.

Recommendation Five

As part of the one-stop-shop approach, identify key personnel and/or areas within referral agencies, specifically the Departments of Agriculture and Food, Environment and Conservation, and Water that have a clear understanding of the permit process and can expeditiously deal with required assessments.

There are legislative matters that can cause delays in the permit process. For example, DEC has received legal interpretation regarding clearing controls that preclude it from issuing a clearing permit until any other necessary approvals have been received, such as a water licence. In the case of clearing permits, under section 51O of the *Environmental Protection Act 1986*, the Chief Executive Officer (CEO) of DEC must have regard to any planning instrument or other relevant matter when assessing a clearing permit application. Considering planning instruments and other relevant matters must be read in conjunction with the overall objects of the *Environmental Protection Act*. For example, where the

proposed land use is dependant on additional water being available, the CEO is likely to provide agreement in principle to grant a clearing permit pending confirmation that a water licence will be granted.

Also as previously stated, section 117 of the LAA requires that the PLB not issue permits until it is satisfied that requirements in relation to the proposal arising from the *Environmental Protection Act*, and any other written laws relating to environmental conservation, which is applicable to the land under the lease, have been complied with. In relation to clearing native vegetation, all clearing requires a clearing permit granted under Part V of the *Environmental Protection Act* unless it is for an exempt purpose. It is DEC's view that the issue of any pastoral diversification permit before a required clearing permit is granted is arguably invalid as the PLB could not demonstrate it had complied with the requirements of Section 117 of the LAA.

However, in approving permits where the clearing of native vegetation is required by the proponent, the PLB includes the following condition:

> *'A copy of the clearing permit specifically relevant to this activity must be lodged with this office within 18 months of the date of this permit and prior to the commencement of any works associated with the proposal.'*

This condition provides for the fact that a number of pastoral lease holders choose to apply for native vegetation clearing permits from DEC after the PLB have granted a permit. The timeframe of 18 months allows for the proponent to meet the clearing permit requirements and DEC's assessment timeframes.

The senior officers' group also reported that attempts have been made to identify and document areas of agreement between agencies in relation to permit applications; for example, on the recommendation of the PLBU and Commissioner for Soil and Land Conservation, DEC and the Department have been working on developing a suite of non-indigenous plant species that pastoralists could utilise via permit as either forage for stock or as crops, but which would not present a threat in terms of 'weediness'. A draft policy and lists of agreed non-indigenous species is being developed by the Department in consultation with DEC, and has been sent to the PLB for endorsement. The PLB is consulting with DEC on the policy so that it can be finalised.

It is proposed that future diversification permit applications that identify any species to be planted will come from the inter-agency agreed list of suitable species for that area, allowing it to be considered much more simply and quickly. This will also avoid problems that have arisen in the past where applicants have listed specific species in applications and later changed their minds, requiring a new suite of approvals.

The senior officers' group also considers there may be instances where future diversification permit applications are of sufficiently small scale that they can be expedited more quickly than is currently the case. To this end, agreement is needed across Government about the scale of proposals and their requisite levels of assessment. Legislative change may also be required in specific areas. The senior officers' group believes that it should be possible to identify revised thresholds for issues where exemptions from other legislated requirements for approval could be negotiated.

Currently, under the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*, diversification permit activities under a pastoral lease can be exempt from clearing permit requirements if they involve up to one hectare per year. It could be considered that a larger area may be applicable under circumstances, including where agreed species are to be planted, or the area is to be cleared only for a trial period and subject to revegetation with native species. This is a matter worthy of further consideration and would involve

amendments to the above clearing regulations to implement. Similar proposals could also be considered in relation to other external regulators of diversification activities on pastoral leases.

Recommendation Six

The PLB, and the Departments of Agriculture and Food, Environment and Conservation, and Water should establish a steering group to further explore and report to Government on possibilities for further exemptions from external approval, or opportunities for streamlined external approval, for pastoral diversification proposals that could be predetermined to have minimal impacts on matters subject to external regulation (e.g. native vegetation conservation, water resource conservation). The report would include advice on the frameworks to operate in such circumstances to ensure that the purposes of the external regulation processes and enabling legislation are met.

Rangelands tenure

The senior officers' group would like to take the opportunity presented by this review to highlight that issues regarding tenure and land use change in the rangelands, that have persisted for may years remain, and require further review and resolution.

Numerous State and national reports, including the Industry Commission's (1998) Full Repairing Lease: Inquiry into Ecologically Sustainable Land Use, the National Principles and Guidelines for Rangeland Management (1999), the Productivity Commission's (2002) Pastoral Leases and Non-Pastoral Land Uses, as well as numerous reports commissioned by the previous State Government and prepared by pastoral industry working groups, have advocated for more flexible models of land tenure in the rangelands. In particular, the group is aware of the previous Government's intention to establish tenure arrangements that would support multiple uses such as conservation, tourism, Aboriginal land use, exploration, mining and energy production (including geothermal and solar power generation), horticulture and intensive agriculture, as well as pastoralism. The group's view is that this is essential to encourage social and economic development, while maintaining valuable ecosystems and landscapes, particularly through intensifying land use and reducing pressure on rangeland resources.

Recommendation Seven

The Department of Agriculture and Food should initiate a review and prepare a discussion paper on alternative tenure arrangements in the rangelands that will support a range of values and uses of rangeland resources to provide social, economic and environmental outcomes for the State.

Appendix One – Pastoral tenure and diversification

Pastoral tenure

Pastoral tenure is considered the 'lowest' form of use for the State's rangelands other than Crown land. Lowest in this context does not connote 'least' or 'worst', but rather intensity compared to say a mining or large scale tourism operation. It is also indicative of the prevailing view of Australia's rangelands when pastoral leases were initially allocated to ensure the country's vast 'wastelands' were occupied and providing some economic return, as well as to stop any un-controlled occupation of these remote areas. Essentially pastoralism via lease provided a useful policy instrument until alternative, potentially higher value uses were determined (Standing Committee on Public Administration and Finance, 2002).

The Productivity Commission's report *Pastoral Leases and Non-Pastoral Land Use* (2002) cites Holmes (2000) in summarising the history of pastoral leases as policy instruments via six phases:

1. *Managing the pastoral frontier (1847–1861)—pastoral leases provided temporary low-cost access for early pastoralists while preserving future options on land allocation and use.*
2. *'Unlocking the land' and facilitating closer settlement (1861–1884)—pastoral leases enabled the development of smaller holdings under specified conditions*
3. *Progressive closer settlement (1884–1950s)—the sequential, managed subdivision of pastoral leases into family-sized holdings*
4. *Policy vacuum and clientelism (1950s–1970s)—no clear policy function; tinkering with the system and responding to lessees' concerns about tenure upgrading; reduced rentals and other concessions*
5. *Sustainability, existence values and multiple use (1980s–1996)—emerging use of rangeland monitoring; sustainable use; conservation of biodiversity and controlled public access and*
6. *Coexistence (1997–present)—settlement of native title claims and recognition of the practicalities of coexisting titles; ongoing involvement with issues in phase five (above) including sustainability and multiple use.*

During its history, Western Australia's pastoral industry has seen periods of significant profitability, particularly up to the 1930s and during parts of the 1950s and 1960s. However, prolonged droughts and declining international wool prices have hit the industry hard, particularly from around the 1970s. Schapper (n.d.) reports that in 1993, the Pastoral Wool Industry Task Force noted virtually none of the State's pastoral wool production properties could generate a positive income at current wool prices (1993 prices), and consequently 30 to 60 per cent would need to leave the industry. He cites Jennings (1979) in concluding that as a result the government was spending more money on servicing the industry than it collected as rent.

In spite of these difficulties, the industry remains the most geographically significant land use in the rangelands covering about 45 percent of its area (and 36 percent of the State). There are 470 pastoral stations made up of 519 pastoral leases throughout Western Australia's rangelands covering nearly 90 million hectares from the Kimberley in the north to the Great Australian Bight in the south. About 49 percent of the 527 pastoral leases are held by families or small family companies (Environmental Protection Authority, 2004, cited in Rangelands NRM Coordinating Group, 2005). However, an increasing number of leases are

held by mining companies (particularly in north-east Goldfields and Pilbara) and Indigenous interests (especially in the Kimberley).

Pastoral tenure is experiencing change, with trends in aggregated pastoral lease areas by management arrangement showing:

- pastoralists have reduced holdings by 6.5 million hectares
- Indigenous interests have increased holdings by 2.7 million hectares
- DEC has increased holdings by four million hectares
- mining interests have increased holdings by two million hectares (Department of Agriculture and Food, 2003, cited in Rangelands NRM Coordinating Group, 2005). However, mining operations are still required to run pastoral leases for pastoral purposes under the LAA.

Administration and obligations

Administration of pastoral leases is provided through the PLB, which is established under section 94 of the *Land Administration Act* 1997 (LAA). In general terms pastoral leaseholders are required to:

- abide by the lease conditions and any directions by the Board and comply with the LAA
- manage the lease in accordance with best environmental management practices by using pastoral methods appropriate for the land and for the management, conservation and regeneration of pasture for grazing
- maintain indigenous pasture and other vegetation on the lease to the satisfaction of the Board
- comply with a determination by the Board on the numbers and distribution of stock
- not allow stock agistment on the lease without the Board's written permission and
- control declared animals and plants on the lease in compliance with the *Agriculture and Related Resources Protection Act 1976* and to the satisfaction of the Board.

The Board can set the stocking rate of a lease, require the leaseholder to make improvements to the land, and direct the leaseholder to manage and work the land to its best advantage as a pastoral property. Failure to meet these general obligations may result in the Board issuing a default notice and failure to comply with a default notice is an offence and may lead to prosecution or the lease being forfeited (Environmental Defenders Office, 2003)

Pastoral purposes and diversification

Section 93 of the LAA specifies that pastoral leases can only be used for 'pastoral purposes' defined as:

a) the commercial grazing of authorised stock

b) agricultural, horticultural or other supplementary uses of land inseparable from, essential to, or normally carried out in conjunction with the grazing of authorised stock, including the production of stock feed and

c) activities ancillary to the activities mentioned in paragraphs (a) and (b).

However, when the LAA replaced the previous *Land Act 1933*, it made provision for the PLB to issue permits for diversification on pastoral leasehold land:

- to clear land
- to sow non-indigenous pasture
- for agricultural use of land under a lease
- for use of land under a lease for tourism, supplementary to pastoral activities
- for non-pastoral use of enclosed and improved land or
- to keep or sell prohibited stock.

This provision was created so pastoralists could implement relatively small scale, pastoral-centric activities to improve viability without triggering 'future act' provisions under the *Native Title Act 1993*. Future act provisions are triggered when changes in land use are proposed that will affect native title rights and interests, in which case a range of options exist under the *Native Title Act* to manage these – for example, negotiating an Indigenous Land Use Agreement. Therefore, diversification permits are only provided for activities consistent with pastoral tenure. They are not appropriate for permitting large scale changes in land use that effectively see land used primarily for purposes other than pastoralism defined in the LAA.

Benefits of diversification

It has long been recognised that diversification on pastoral leasehold land can provide significant benefits. Even the relatively small scale options available to pastoralists via a diversification permit can improve overall viability, which can in turn reduce reliance on grazing and consequently pressure on fragile land systems.

The Industry Commission's (1999) *Inquiry into Ecologically Sustainable Land Management* considered that *alternative economic activity in the rangelands has the potential to be beneficial, both in terms of the economic circumstances of leaseholders and the ecologically sustainable management of the rangelands* Accordingly it recommended *each State and Territory review its policy and practice on the leasing of Crown land for agricultural purposes with a view to removing any impediments to the efficient diversification of economic activity* (Industry Commission, 1998, p. 387–388). Likewise, a recommendation in the *National Principles and Guidelines for Rangeland Management* stated *Governments and communities should encourage rangeland businesses to manage change through promoting opportunities for diversification, multiple use and alternative resource use* (ANZECC and ARMCANZ 1999, p. 14). The previous State Government attempted to establish a more flexible tenure system in the State's rangelands, but was ultimately unsuccessful.

Problems with diversification

Reviews of pastoral diversification find that while permits provide a transparent mechanism for changing land use they are particularly limited. The Productivity Commission (2002, p. 45) argues that this is because they are generally issued for short timeframes and are not transferable with the lease title. These are particular concerns raised by Tourism Western Australia, which believes the State is forgoing significant economic development due to the current limitations of diversification permits. To address the problem of non-transferability in Western Australia, the PLB has developed a process whereby a permit may be issued on the same terms and conditions without repeating the referral process when transferring a lease to a new leaseholder.

Tourism proposals by third parties seeking to conduct activities on a pastoral lease are not applicable to LAA permit provisions. Third parties seeking to develop tourism operations on pastoral leases must seek, with the approval of the pastoral lease holder, alternative tenure available under the LAA for the area of the lease they seek to operate. Such alternative tenure may entail a future act' under the *Native Title Act*, but proponents are assisted with the determination and/or negotiations by the State Lands Services and Native Title Unit of the Department of Regional Development and Lands (DRDL).

In addition, a perceived problem with permits in Western Australia is they are being used to disguise what are essentially larger scale operations, not primarily related to pastoralism. This is particularly the case in relation to tourism with legal opinion to the PLB in 2005 suggesting that '*it would seem that the PLB has to date viewed the provisions of section 121 in a relatively generous way*'.

Mechanisms for alternative tenure

A range of legislation provisions exist under the LAA that can support tenure other than pastoral lease. Firstly, there exists a limited provision under section 91, whereby the Minister for Lands may grant a licence or *profit à prendre* in respect of Crown land for any purpose. This provision has seen some limited use to support third party access on pastoral leases for tourism. However, this is a relatively short term measure and does not support long term investment and employment.

Larger scale development on pastoral land (or any Crown land for that matter) is possible under Part Six, section 79 of the LAA, under which the Minister for Lands can lease Crown land for any purpose, with or without conditions. In addition, section 122 under Part Seven of the LAA, which relates specifically to pastoral leases, allows the PLB to issue permits for non-pastoral use of enclosed or improved land. It states:

1) *The Board may, on the application of a pastoral lessee, issue a permit for the lessee to use specified land under the lease for any non-pastoral purposes if the land has been enclosed or improved.*

2) *An application must specify the use proposed, any facility proposed to be constructed, and the areas of land proposed to be used.*

3) *A permit under this section –*

   (a) *may include a permit for the sale of any produce arising from an activity permitted; and*

   (b) *may be issued for any period and subject to any conditions the Board thinks fit.*

Alternatively the Government could explore providing opportunities for pastoralists and other developers to own what is currently pastoral lease as freehold. Part Six, section 74 of the LAA provides the Minister for Lands with wide ranging powers to sell land with or without conditions via a range of options such as public tender or auction. The sale of land could be offered to current lessees first, and in the event they do not wish to purchase, then opened for public interest. Any current lessee that did not purchase land would likely need to be compensated for improvements made while the land was under pastoral lease in accord with section 114 of the LAA. New Zealand has undertaken a process of tenure review that now sees agreements reached between the government and lessees where pastoral tenure is converted to freehold. Through negotiation, land of productive value is excised as freehold, and land with high conservation values is transferred to the public conservation estate (Standing Committee on Public Administration and Finance, 2004, cites Productivity Commission, 2002).

It needs to be noted that the provisions under Parts Six and Seven described above will trigger future act provisions under the *Native Title Act*, which will need to be addressed by proponents.

The LAA also provides for establishing governance arrangements that could assist the Government deal with changing tenure in the rangelands. Part Six, section 73 allows the Minister for Lands to establish an advisory panel *to advise him or her in respect of the exercise of the powers, and the performance of the duties, conferred or imposed on the Minister by this Part*—Part Six being Sales, leases, licences etc. of Crown land.

Regional planning and development

In the event the Government intends to adopt a more flexible approach to land tenure in the rangelands, it will need to be underpinned by comprehensive land use planning. This will be needed to identify the resources and values that exist in the rangelands, and which will need to be considered in changing land use, and future development.

The *Planning and Development Act 2005* provides the legislative mechanisms for regional planning via a State Planning Policy and/ or regional planning schemes. Interestingly the Planning Minister, John Day announced on 5 May 2009 that the Western Australian Planning Commission (WAPC) would establish regional planning committees for the Kimberley, Pilbara, the Mid-West and the Gascoyne. He stated that:

> *The committees will provide leadership and focus for planning and decision-making. For too long, local government has been left to determine major regional issues and deal with major projects without any regional planning context. This has led to delays, overlap and duplication among approval bodies; confusion and costs to industry and community groups; and land shortages. Importantly, regional planning committees will provide a platform for a collaborative approach to planning* (Government Media Office, n.d.).

Such planning will support diversification on pastoral land and this report could be forwarded to the WAPC's regional planning committees for consideration.

Additionally, a Directors' General Working Group is considering establishing a Statewide Development Approval Information System, the concept of which emerged following the Keating Review of the Project Development Approvals System (Government of Western Australia, 2002). While the Keating Review focused primarily on large scale mining and industrial development, it also suggested regional planning to support other plans and development. The Review stated:

> *Such plans are part of an alternative methodology that would move beyond anticipate-and prevent towards a plan-and-manage system, which can only be achieved in a meaningful way if done on a regional or locality level, that is, a 'place-based' approach based on regional planning in terms of sustainability assessment. There is also an emphasis on greater access to the valuable data collected in the course of project approvals as a basis for planning ahead for managed development.*
>
> *At present, decision making and recommending agencies are predominantly acting reactively on a project by project basis* (Government of Western Australia, 2002, p. 109).

While the Government is looking first at streamlining approvals for large scale development in line with the Keating Review's recommendations, its intention is to develop a system that can accommodate other approvals processes as well. This could include approvals for diversification permits.

The project to develop a State Development Approvals and Information System is being run by the Department of the Premier and Cabinet, and is currently assessing the feasibility of information technology systems that allow:

1. applications to be lodged electronically
2. applications to be tracked in terms of relevant approvals by agencies and expected timelines and
3. access to relevant environmental and other information to support development proposals.

A report to Directors General on progress and options to establish a Statewide system is due June 2009.

Appendix Two – Assessing permit applications

The PLB

Administering the permit process by the PLB sees proponents complete an application form, which is in turn referred to relevant agencies for consideration in accord with section 117 of the LAA, which states:

> *The Board must not issue a permit under this Division unless it is satisfied that any requirements in relation to the proposal arising from the operation of –*
>
> *a. the Agriculture and Related Resources Protection Act 1976*
>
> *b. the Environmental Protection Act 1986*
>
> *c. the Soil and Land Conservation Act 1945*
>
> *d. the Wildlife Conservation Act 1950 or*
>
> *e. any other written law relating to environmental conservation which is applicable to the land under the lease*
>
> *have been complied with.*

Consequently, comment is sought from a range of referral agencies with DEC, DoW and the Department being the primary three and others added as per the specifics of the LAA permit application. These agencies are provided an opportunity to comment on the proposal and the draft permit conditions, noting where required additional considerations by the PLBU and applicant and invariably noting the additional approval processes required under different legislation such as native vegetation clearing permits from DEC and water licences from DoW. These additional approval requirements are noted in the LAA permit conditions as *the permit is subject to…*

The PLB requests agencies responsible for administering these statues to make any necessary assessments within 42 days. Under its current arrangements, the PLB will issue permits subject to proponents obtaining relevant statutory approvals—this seems at odds with the provisions of section 117 above.

Proponents seeking a permit are requested to provide a map and layout of the proposed diversification activity to ensure relevant agencies have sufficient information to make any judgements and provide approval with or without conditions. Applications deemed contentious by the PLB are referred to the Board for consideration. The PLB retains discretionary power over the duration and conditions of each permit.

On average the process to obtain a permit from the PLB takes about three months, although cases of final approval in accordance with all relevant legislation taking up to two years have been noted.

Statutory requirements

As mentioned above, once an application is received by the PLB it is referred to agencies with statutory responsibilities for land use, and managing the State's land, water and biodiversity. These agencies' statutory processes are described below.

Department of Environment and Conservation

Where a permit application involves clearing a portion of land of greater than one hectare, a clearing permit is required from DEC. DEC administers the:

- *Environmental Protection Act 1986*, in relation to clearing controls, pollution and administration of development environmental assessments
- *Wildlife Conservation Act 1950*, in relation to protected and threatened species and
- *Conservation and Land Management Act 1984*, in relation to managing conservation reserves and other allocated lands, especially those vested in the Conservation Commission.

With regard to clearing controls, there is an exemption in the *Environmental Protection Act 1986* to allow grazing on a pastoral lease in accordance with the LAA. However, grazing that does not comply with these requirements is not exempt and requires a clearing permit.

Stage 1 assessment of clearing applications

Once applications are received, they are entered into DEC's system and advertised, and then forwarded to the relevant regional office. A DEC officer will carry out the Stage 1 assessment, and if a site visit is required, the officer will request a time to visit and discuss the application. To assist with assessment, officers from the Department of Agriculture and Food may also attend. DEC uses existing information and studies as well as advice from other government agencies to assess applications against the set of principles below.

Under section 51O of the *Environmental Protection Act*, the Chief Executive Officer of DEC must have regard for 10 clearing principles when deciding to grant or refuse a permit. The CEO must also have regard to planning instruments (such as town planning schemes) and other relevant matters. The 10 Principles are that native vegetation should not be cleared if:

1. *it comprises a high level of biological diversity*
2. *it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia*
3. *it includes, or is necessary for the continued existence of, rare flora*
4. *it comprises the whole or a part of, or is necessary for the maintenance of a threatened ecological community*
5. *it is significant as a remnant of native vegetation in an area that has been extensively cleared*
6. *it is growing in, or in association with, an environment associated with a watercourse or wetland*
7. *the clearing of the vegetation is likely to cause appreciable land degradation*
8. *the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area*
9. *the clearing of the vegetation is likely to cause deterioration in the quality of surface or underground water and*
10. *the clearing of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding.*

Stage 2 assessment — providing further information

If there is not enough information on a particular principle to decide whether to approve or refuse a permit, DEC can ask the applicant to provide more information so it can consider the principle in detail. This is referred to as a Stage 2 assessment and only a select number of applications require it. Stage 2 assessment may involve employing a qualified person to collect and analyse information; for example where DEC requires more information about rare vegetation that is present.

Negotiation/discussion and decisions

The assessment process may also include discussion and negotiation between the applicant and DEC. Once the assessment and any negotiations are complete, a decision is made to grant or refuse the permit to clear.

Applications received by DEC are normally determined in less than 90 days. However, delays may occur where an applicant changes a proposal or they have not yet received other relevant approvals such as a water license. DEC has received legal interpretation regarding clearing controls that preclude it from issuing a clearing permit until any other required approvals have been received. Therefore, in the event DEC has assessed a clearing application and agrees to issue a permit, but the proponent also requires another approval such as a water licence, DEC will inform the proponent that it will issue a clearing permit as soon as he/she has received the other required approvals.

There is a legal requirement that information about applications for clearing permits is published. In addition, clearing permit approvals are also advertised and can be appealed by community stakeholders to the Office of the Appeals Convenor within 21 days.

Environmental protection

The Environmental Protection Authority (EPA) considers whether proposals are of environmental significance and can not be assessed adequately under other statutes. If this is the case a proposal can require formal environmental assessment. However, as proposals for diversification permits are for relatively low level activities, they are not likely to be of sufficiently high environmental significance to warrant formal EPA assessment.

Department of Water

DoW grants licenses to take water under the *Rights in Water and Irrigation Act 1914 (RIWI Act)*. License applications are required to take water, interfere with bed and banks of a watercourse, or construct a well. In granting licenses, consideration is given to both the short- and long-term economic, environmental and social impacts.

Water licensing is active in all proclaimed areas and for all artesian groundwater wells throughout the State. There are 45 groundwater and 22 surface water management areas proclaimed under the *RIWI Act*.

New licences are only issued where allocation limits have not been reached to ensure protection of the interests of existing users and the environment.

Establishing the level of assessment

Upon receiving a licence application, a DoW officer determines whether a low, medium or high risk assessment is required. The level of assessment and detail required is determined according to the level of risk and potential impacts from the proposed development. Factors including the amount of water requested and/or location of proposed activity are considered.

Assessing applications

Once the level of assessment is determined, a desk-top assessment is undertaken based on criteria set out Schedule 1, Section 7.2 of the *RIWI Act*, which states:

> *In exercising that discretion, the Minister is to have regard to all matters that the Minister considers relevant, including whether the proposed taking and use of water –*
>
> *(a) are in the public interest*
>
> *(b) are ecologically sustainable*
>
> *(c) are environmentally acceptable*
>
> *(d) may prejudice other current and future needs for water*
>
> *(e) would, in the opinion of the Minister, have a detrimental effect on another person*
>
> *(f) could be provided for by another source*
>
> *(g) are in keeping with –*
>
> *(i) local practices*
>
> *(ii) a relevant local by-law*
>
> *(iii) a plan approved under Part III Division 3D Subdivision 2 or*
>
> *(iv) relevant previous decisions of the Minister*
>
> *or*
>
> *(h) are consistent with –*
>
> *(i) land use planning instruments*
>
> *(ii) the requirements and policies of other government agencies or*
>
> *(iii) any intergovernmental agreement or arrangement.*

The Minister may refuse a licence on the grounds someone has been convicted of an offence under the *RIWI Act*, and/or if he/she is not satisfied a person has the resources, including financial resources, to carry out licenced activities.

In addition, identifying whether the proposed development satisfies requirements and policies of DoW, other government agencies and/or any inter-governmental agreement or arrangement are also taken into consideration.

Applications received in the same resource (groundwater area, subarea and aquifer) are assessed on a first-in-first-served basis and any subsequent applications received may not be issued until a decision is made on prior applications.

If legal access is not secured but an applicant can satisfy all other requirements, then a licence can be granted conditionally. In addition, if no irrigation or land use is in place, development conditions are placed on the licence, which is normally issued for two years.

Initial decision

If the initial assessment satisfies the criteria above and identifies that a proposed development poses no risks to the aquifer, environment and/or other users, the assessing officer commences the approval process to issuing a licence/permit. If however the proposed development does not satisfy the criteria and/or is identified as a potential risk to the aquifer, environment and/or other users ('Medium' to 'High' risk) the assessing officer commences a more detailed assessment.

Detailed assessment

The information required in undertaking a detailed assessment is determined on a case-by-case basis. DoW considers that up to 90 days to process and grant a licence is an acceptable period taking into consideration the complexity of some applications. In situations where further information is required, DoW's Statewide Policy No. 17 (timely submission of required further information) guides setting time frames for submitting additional information to support an application. Ultimately, processing times are reduced when the application form is completed properly and the applicant submits requested information on time.

DoW may also require:

Hydro-geological reporting

Hydro-geological reports are required to assess possible impacts of abstraction on the resource and other groundwater users. The level of assessment depends on the volume requested, level of use and management of groundwater in the area, quality of the groundwater resource, and proximity of the proposed draw point to other groundwater users or Groundwater Dependant Ecosystems. DoW may also require Groundwater Monitoring Reports to satisfy it that abstraction is not causing detrimental impacts on the environment or other users.

Operating strategies

Operating strategies are required to detail the licensee's responsibilities for use and management of water. They include commitments by the licensee to submit monitoring reports describing any impacts taking water may have on water resources, the environment and other water users.

Developmental timetable

Development timetables are required to ensure development and use of water is undertaken within a reasonable time period, once a decision has been made to grant a licence or permit.

Process enhancement

DoW is of the view that it has continued to maintain the integrity of the State's water resource through a period of rapid development. It has responded to the challenge and balanced its priorities across the full spectrum of statutory responsibilities within the resources available and is committed to developing processes and efficiencies to reduce time to assess future applications.

DoW is reviewing its the water licensing process to identify areas where improved responses to applications can be achieved within acceptable risk and without elevating unacceptable impacts on water resources. For example, it has implemented a fast tracking process for renewing licences, which are unlikely to have a significant impact on the resource, other users and/or the environment. This reduces the allocation of DoW's resources on low impact activities and deploys resources to managing more high risk applications, where detailed assessment is required.

Any new processes continue to take into consideration the statutory obligations and not risk the rights of licensees or the role of DoW.

Proclaimed areas

In proclaimed areas it is illegal to take water from a watercourse or groundwater aquifer without a licence.

A licence does not guarantee water is always available to be taken. During drought periods restrictions are applied so water is shared and damage to the environment, the resource and users is minimised. Conditions are placed to define how and when water may be taken and specify obligations the licence holder must meet when using water.

With the exception of the Albany and Gascoyne groundwater areas, licensing of stock and domestic groundwater use of up to 1,500 kilolitres per annum from a non-artesian aquifer in proclaimed areas is not necessary. This is due to both the volume of water drawn being relatively small and the minimal risk of damage to the aquifer.

Dewatering operations in proclaimed areas require a licensed, although a dewatering exemption order allows certain types of dewatering activities to be exempt from licensing.

Unproclaimed areas

Water can be taken from watercourses in unproclaimed areas without a licence so long as its flow is not '*sensibly*' diminished, affecting the rights of downstream users. If conflicts arise, DoW can issue a direction defining the amount, purpose and how water may be taken.

Water can be taken in unproclaimed groundwater areas without a licence so long as the draw is not from an artesian aquifer.

Licences

5C Licence

A 5C licence allows a licence holder to 'take' water from a watercourse, wetland or underground source. Unless a person holds a 5C licence, any unauthorised taking of water is prohibited except where they have another right to do so or are exempt from licensing.

26D Licences

A 26D licence is issued to construct or alter wells, and is required to:

- commence, construct, enlarge, deepen or alter any artesian well or
- commence, construct, enlarge, deepen or alter any non-artesian well in a proclaimed groundwater area.

A 26D licence does not allow the licence holder to 'take' water, although a person may apply for a 26D licence and 5C licence (to take water) simultaneously

Permits

Permits are granted to authorise interference or obstruction of the bed and banks of a watercourse or wetland. Water cannot be 'taken' under a permit, however, in many instances; persons exercising their rights in proclaimed and unproclaimed areas require permits. This includes installing works or objects that obstruct, or interfere with a watercourse or wetland or its bed or banks, in order to exercise their right to take water.

Permits can be issued under the following sections:

- ***Section 11 permit***—works pertaining to taking water in a proclaimed area where access is via road or Crown reserve.
- ***Section 17 permit***—works pertaining to taking water in a proclaimed area.
- ***Section 21A permit***—works pertaining to taking water in an unproclaimed area where access is via road or Crown reserve.

Department of Agriculture and Food

The PLB forwards permit applications and any proposed permit conditions to the Department of Agriculture and Food for consideration, which are assessed by the relevant district pastoral lease inspector. If required, the Department also provide advice on applications in terms of their viability, and industry development issues such as animal and crop production, and biosecurity (e.g. weeds and quarantine). The Department and DEC are jointly preparing a list of approved pasture species to clarify potential crops that are of low risk in relation to becoming weeds.

Commissioner of Soil and Land Conservation

The Department also has a regulatory obligation regarding diversification permits via the *Soil and Land Conservation Act 1945*. Under the Act, the Commissioner for Soil and Land Conservation must consider diversification activities in terms of their potential to cause land degradation, defined in the Act as *soil erosion, salinity, eutrophication, flooding; and the removal or deterioration of natural or introduced vegetation that may be detrimental to the present or future use of land*. This is particularly the case where proposals include clearing and proponents need to obtain a clearing permit.

Pastoral lease inspectors prepare land degradation assessment reports (template attached) via desk-top assessment or field inspection, which forms the basis of the Commissioner's advice to the PLB on possible land degradation risks.

Department of Fisheries

Aquaculture licences

Assessing applications for aquaculture authorisations by the Department of Fisheries (DoF) occurs via one of three processes depending on the location of a proposal and nature of proposed activities. The three processes relate to freehold land sites, non-freehold land sites and marine based sites. Aquaculture on pastoral land requires a licence and is assessed as a non-freehold land site. Applications must be made on a specified form and submitted to the licensing branch of the Department of Fisheries.

The Department determines competency and assess whether all reasonable information to enable a determination has been provided. Applications are then referred to relevant decision-making authorities and agencies, and representative community and industry groups. Once other agencies have completed their processes, and clearances have been obtained, DoF is in a position to determine an application.

It normally takes six to eight months to finalise an aquaculture licence application.

Translocation authority

In accordance with Regulation 176 of the *Fish Resources Management Regulations 1995,* a person must not *bring into the State, or a particular area of the State, a live fish not endemic to the State, or that area of the State, other than in accordance with:*

- *the written approval of the Executive Director of the Department of Fisheries or*
- *the written authority of the Executive Director of the Department of Fisheries.*

Proposals to bring in species that are not native to a particular area require translocation approval or authority. Applications for an authority need to be lodged with DoF concurrently with an application for an aquaculture licence. The fee for this process is $135 and it normally takes eight to 10 weeks to complete a translocation authority application.

Department of Mines and Petroleum

Section 16(3) of the *Mining Act 1978* states that *no Crown land that is in a mineral field shall be leased, transferred in fee simple, or otherwise disposed of under the provisions of the Land Administration Act 1997, without the approval of the Minister* (for Mines). All of Western Australia is in a mineral field, and therefore, applications for diversification permits must be considered under this provision to ensure areas under permit remain accessible for mining and petroleum exploration and exploitation.

Section 16(3) approvals are given a three month deadline for assessment, or specified deadline. The Mineral Title and Services Branch is first point of enquiry regarding progress of an approval and can grant Section 16(3) approval if a site has previously been assessed or deemed not to warrant Geological Survey Advice.

There have only been 59 permit applications considered by the Department of Mines and Petroleum during the past 11 years, with none opposed, and only seven approved with conditions. Conditions are applied when:

- known mineral deposits exist
- high mineral potential and mining tenements exist and/or
- miscellaneous licences for mining-related infrastructure are in place.

Native title considerations

Granting a permit may entail a future act process if the act of granting that permit affects the rights and interests of native title. Under Subdivision G—Future acts and primary production' of the *Native Title Act 1993 (Cth)*, section 24GB—Acts permitting primary production on non-exclusive agricultural and pastoral leases, sets out those activities that may not entail a future act under the *Native Title Act*.

Generally (but not exclusively), permits for pastoral purposes being sections 119, 120, 121 and 122A, do not entail a future act and as such are permitted under the *Native Title Act*. Non-pastoral activity however covered under section 122, does require scrutiny to determine its native title status.

Given the complexity of the *Native Title Act*, where it has been considered that there may be a native title impact, permit applications are referred initially to the DRDL's Land Division Legal section for advice. If a permit application is impacted by the *Native Title Act*, then State Land Services, Pastoral Land and the Native Title Unit work with permit proponents to negotiate and resolve if possible the native title requirements. However such processes average two to three years in duration.

Since early 2009, the PLBU has received several permit applications that have Indigenous Land Use Agreements (ILUA) in place. This seems to indicate growing acceptance by the industry that such arrangements are critical ahead of development occurring.

Other Government interests

As well as statutory requirements regarding diversification permits, other agencies also have an interest in supporting alternative land use on pastoral land.

Tourism Western Australia

Tourism Western Australia believes the level of tourism allowed via permit is substantially restricting industry development in regional Western Australia, and consequently economic returns to the State—given tourism is worth $7 billion annually and employs around 80 000 people (directly and indirectly).

The State's rangelands contains a number of valuable tourism assets and iconic attractions, and the industry places increasing emphasis on working with land managers and the resources sector to access them and develop their tourism potential sustainably.

However, given tourism allowed via diversification permit must be pastoral-related and is exclusively for the lessee, third party investment and wider community employment opportunities are foregone.

A licence can be issued under section 91 of the LAA to enable non-exclusive third party access for tourism activities on pastoral lands; however, is not widely used and is not a long term solution to investment in tourism infrastructure.

Excision from a pastoral lease provides the best long term potential for security of tenure required for tourism investment.

The *National Principles and Guidelines for Rangelands Management* recognised that:

> *tourism can play an important role in the promotion and protection of cultural and heritage assets as it enables people to better understand the environment which in turn creates a greater awareness of the importance of rangelands, both from a historical and present-day perspective. In particular, ecotourism, which involves education and interpretation of the environment to promote ecological sustainability, has a major role to play in the future use and development of the rangelands.* (ANZECC and ARMCANZ 1999, p. 21).

Department for Planning and Infrastructure

The Western Australian Planning Commission (WAPC) approves subdivision and leasing of alienated land through the *Planning and Development Act 2005.* The Department for Planning and Infrastructure (DPI) supports the WAPC and is involved in all land use matters including town planning schemes, amendments, subdivisions and other matters delegated to it by the Commission.

DPI receives referrals for Crown land matters such as establishing new reserves and converting reserves to freehold, and occasionally referrals for diversification permits where deemed appropriate by the PLBU. It is contacted by local government authorities seeking information about on-ground management of permitted activities and implications for issues such as environmental health, infrastructure and road access. It also receives calls from the public seeking clarification about how permits and associated developments were approved.

As has been mentioned the permit provisions of LAA do not provide for large scale changes in land use on pastoral leases. One of the Department's concerns is that this can encourage pastoralists to disguise a change in land use under a diversification permit as meeting the provisions of the Act, but which is in fact a significant change that becomes a primary source

of income and activity on the lease. Changes of this nature are considered unlawful, as activities such as construction generally trigger requirement for a future act process under the *Native Title Act*. In addition, while DPI philosophically supports development on pastoral lands, it is concerned pastoralists may not be addressing the same standards regarding health and safety, infrastructure and water and sewerage as other developers, in their attempts to limit the scale of activities to meet permit conditions.

Furthermore, DPI is concerned that the process for applying for permits is not as clear and transparent as it could be; specifically, there is no standard form of application and application requirements are not clear to proponents up front, and mandatory referrals are not clarified. In addition, there is no set timeframe for dealing with applications, no tracking of applications and no clear method for determining the cost of permits.

Appendix Three – Background to the Review

Purpose

On 3 December 2008, the Minister for Agriculture and Food outlined to Parliament that the Government is committed to sustainable rangeland management through achieving economic, social, environmental, and institutional outcomes that benefit all Western Australians. In particular, he highlighted that opportunities for diversification exist on pastoral land that can provide valuable alternative land uses and as such the process to obtain permission to diversify should, as far as possible, support pursuit of these opportunities (Parliament of Western Australia, n.d.).

Benefits of diversification include maximising agricultural and related returns on Crown land, and improved financial viability and cash flow in pastoral enterprises. However, wider diversification in the rangelands could also result in improved environmental outcomes through better ecosystem management, attracting new investment including the minerals and energy sectors, and investment in new and alternative products to meet emerging market demands.

With regard to pastoral diversification specifically, the Minister established a cross-portfolio review to examine potential procedural improvements, and options to fast-track investment and diversification on pastoral leases. The review has some relationship to a review of viability in the southern rangelands by the Southern Rangelands Pastoral Advisory Group and that of the Government's Red Tape Reduction Group.

Objective

The objective of the review was to develop a whole-of-government position on streamlining the pastoral diversification process, underpinned by achieving triple-bottom line outcomes for the State.

Scope

The review's scope included:

1. ***Investigating establishment of:***
    a. a 'one-stop-shop' approach for assessing applications to diversify on pastoral leasehold land
    b. an information system containing easy access to information about land use options and areas suitable for development based on consideration of biodiversity conservation needs, water resource availability and suitability, Indigenous cultural and spiritual values, and logistics such as infrastructure and labour requirements
    c. risk assessment criteria as a basis for assessing applications – for example, high level assessment for large scale activities in sensitive ecosystems through to administrative processing of relatively small scale activities in resilient ecosystems
    d. operating standards including minimum processing times, protocols for advising applicants on progress and for evaluation and continuous improvement
    e. a stakeholder engagement plan to consult and advise industry and community representatives on any potentially new approach
    f. other tenure-related issue as may be required to meet the objectives and the
    g. need for a group to oversee implementation of the recommendations.

2. ***Developing a project plan to implement recommendations arising from the review, including milestones, key decision points and the resources needed to meet objectives.***

Membership

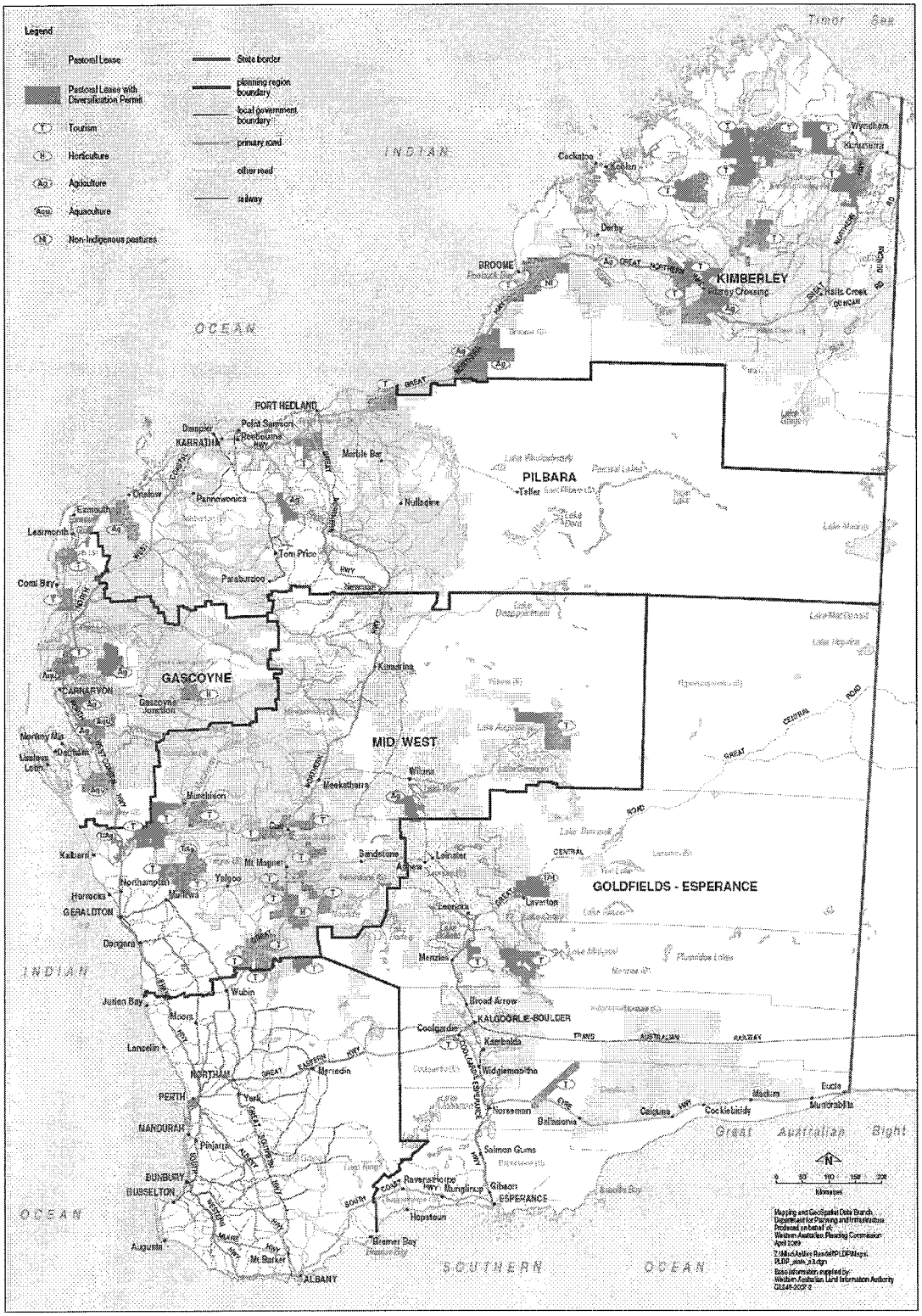
The review was undertaken by a senior officers' group chaired by the Department of Agriculture and Food (the Department), and including the Department of Environment and Conservation (DEC), Department of Local Government and Regional Development (DLGRD), Department for Planning and Infrastructure (DPI), and Department of Water (DoW).

An invitation was also extended to the Departments of Fisheries (DoF), Indigenous Affairs, (DIA) and Mines and Petroleum (DMP) to attend where issues of interest to their portfolios emerged.

Following the group's first meeting, Tourism Western Australia was also invited to participate.

The Pastoral Lands Board (PLB) also attended meetings to provide technical, policy and procedural input.

Appendix Four — Distribution of diversification permits



Pastoral Lease Diversification Permits

Pastoral Lease Diversification Permits - State

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