

Rangelands Reform Proposal

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Worthwhile read for: Pastoralists, Mining tenement holders, Mining tenement applicants

Executive summary

The rangelands cover 87% of the land mass of Western Australia. The Western Australian Government is proposing to reform Crown land tenure over the rangelands to enable a broader range of land uses, increase investment and increase security of tenure over the rangelands.

This reform will affect pastoralists' ability to renew and use their pastoral leases. It will also affect mining tenement holders and applicants and those resources companies that hold pastoral leases. In our view, the major complication to the extension of the term of pastoral leases or conversion of pastoral leases to rangelands leases will be native title and the need to negotiate an Indigenous Land Use Agreement (ILUA).

Rangelands Reform

The rangelands are colloquially those areas of the State which have low rainfall and highly variable climate, and in this context are essentially the majority (87%) of the land mass of Western Australia, excluding the South West and the coastal plain. Pastoral leases occupy approximately 35% of the rangelands, while unallocated Crown land, unmanaged reserves, conservation estates and other tenure occupy the remainder.

The proposed reform arose out of the Rangelands Reform Program which concluded that Part 7 of the *Land Administration Act 1997 (WA)* (LAA) (dealing with pastoral leases) is inadequate to permit diverse land uses and does not provide security of tenure for pastoral lessees or an incentive to invest in the rangelands.

The rangelands reform proposes to enable the grant of rangelands leases, create a statutory right of renewal for pastoral leases and other measures summarised below.

Draft Bill

The Western Australian Government has released a draft Land Administration Amendment Bill 2016 (Draft Bill) to give effect to the proposed changes. The Draft Bill can be obtained from the Department of Lands' (DOL) website. Submissions on the Draft Bill are required by 5pm on 5 May 2016. The Minister for Lands intends to introduce the Draft Bill into Parliament in August 2016. The final version of the Draft Bill will also include consequential amendments to other Acts (as listed in the Draft Bill) including the Mining Act 1978 (WA) (Mining Act). The DOL also released a draft amended Mining Act showing the proposed changes (Draft Amended Mining Act) on its website. Hunt & Humphry Project Lawyers have made a submission concerning the wording of one of the proposed amendments to the Mining Act.

New Rangelands Lease

Currently, pastoral leases only allow use of the land for pastoral purposes. The holder of a pastoral lease can apply for a permit (under Part 7, Division 5 of the LAA) to use the land for other purposes,

which are generally related to pastoral activities e.g. clearing land, cultivating non-indigenous pastures, or pastoral based tourist activities (Diversification Permit).

Some parties such as mining companies that hold pastoral leases are currently required to carry out pastoral activities to comply with the LAA, which may not be appropriate for the intended use of the land.

The proposed rangelands lease will allow for multiple and varied uses. The amended LAA will permit the Minister for Lands to grant a rangelands lease for purposes principally consistent with the preservation of the rangelands as a natural resource. This provides a very wide scope of purposes and the Minister has a broad discretion in relation to the lease term and conditions imposed upon a rangelands lease.

The DOL has suggested that rangelands leases could be granted for the following purposes:

- broad scale agriculture and/or horticulture projects;
- grazing livestock;
- tourism;
- Aboriginal economic development and land management;
- mining company activities that are inconsistent with pastoral purposes;
- conservation purposes; and
- any combination of these.

Given the broad power to grant and impose conditions the Minister for Lands will be also be able to grant a lease for various other purposes and potential lessees can be creative in proposing potential uses of the rangelands.

New Pastoral and Rangelands Advisory Board

The Draft Bill proposes to dissolve the Pastoral Lands Board and the Minister for Lands will administer both pastoral leases and rangelands leases. A new Pastoral and Rangelands Advisory Board will be established to assist in the administration of the rangelands and provide research and policy advice to the Minister for Lands.

Reform to Pastoral Leases

The Draft Bill will enable pastoral lease holder to extend the term of pastoral leases to 50 years. There will be a statutory right of renewal for pastoral lessees who have complied with all legislation and reporting requirements. The Minister will be required to make the offer for renewal for compliant leases at least eight years before the lease is due to expire.

The pastoral lessee will have a right of appeal to the State Administrative Tribunal if, due to non-compliance by the lessee, the Minister decides not to renew the lease or to renew on conditions. The Draft Bill will also allow the transfer of Diversification Permits to an incoming pastoral lessee.

Currently, a person must not hold more than 500,000 hectares under a pastoral lease, unless the Minister is satisfied it is in the public interest. The Draft Bill will increase the maximum area of lease holdings for both rangelands leases and pastoral leases to 1,500,000 hectares.

The Draft Bill also proposes to give the Minister for Land more power to enforce stricter land management requirements on both pastoral and rangelands lessees including in relation to:

- managing the land using best environmental practice appropriate to the area;

- maintaining indigenous pasture and vegetation and not removing trees or disturbing or affecting soil (unless permitted by the lease);
- monitoring, assessing and reporting to the Minister annually on the condition of the land;
- directing lessees to submit a land management plan;
- issuing directions (eg to reduce stock), default notices, forfeiting leases and altering or cancelling diversification permits but the Minister will need to obtain advice from a member of the Pastoral and Rangelands Advisory Board before making specified adverse decisions on default, forfeiture and non-renewal.

Additionally, the Minister must refuse lease renewals and refuse diversification permits if land management and conservation laws are not followed.

Native title

Rangelands leases and any extension to the term of a pastoral lease will need to comply with the future act processes in the *Native Title Act 1993* (Cth) to be validly granted. In almost all cases, this is likely to require the lessee to enter into an ILUA with the relevant native title parties.

The time and resources needed to negotiate and register an ILUA with native title groups will be the major impediment to rangelands leases being granted to potential lessees. The State is not currently proposing to provide financial assistance to proponents or native title parties to negotiate an ILUA but has advised it is working on ways to support this process such as preparing template ILUAs.

Rangelands leases and Mining Tenure

The DOL has advised that rangelands leases will be treated similarly to pastoral leases. Based on the Draft Amended Mining Act, this is substantively correct given:

- tenement applicants will be required to serve a copy of any tenement application upon the holder of a rangelands lease;
- rangelands leases will be treated as Crown Land under the Mining Act so the rights of private landholders will not apply to rangelands leases;
- compensation under the Mining Act is only payable to the holders of rangelands leases where there is damage to improvements or a substantial loss of earnings; and
- a rangelands lease cannot be granted, or the purposes of the rangelands lease amended without the consent of the Minister for Mines.

However, the proposed inclusion of s 20(5)(da) in the Mining Act will require mining tenement holders to obtain the consent of the lessee of a rangelands lease to conduct mining and mining operations within 100m of a “substantial structure that is being used or is intended to be used”. The relevance and restrictions this amendment will place upon mining tenement holders will depend on the purposes for which rangelands leases are granted, the areas where they are granted and the interpretation of “substantial structure” by wardens.

Rangelands leases will also provide another basis for parties to object to the grant of a mining tenement where it overlaps a rangelands lease. However, it remains to be determined if, like a pastoral lease objection, such objections will not lead to a tenement application being refused but will only lead to the imposition of conditions.

Comment

There are still many issues to be clarified in relation to rangelands leases and how they will interact with mining and other tenure in Western Australia. Rangelands leases should enable flexibility and

encourage better economic exploitation of the rangelands. However, the time and resources needed to negotiate and register an ILUA will mean that a proposal will need to be of significant economic benefit to justify these costs. These costs coupled with the obligations of the lease, including to maintain indigenous pasture and vegetation, may mean that the use of the rangelands leases is limited but only time will tell.

For more information or discussion, please contact HopgoodGanim Lawyers' [Resources and Energy](#) team.

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