

Access to Pastoral Land



Report to the
Minister for Planning and Infrastructure
from the Access to Pastoral Land
Pastoral Industry Working Group

Background

Following the Gascoyne Muster held in Carnarvon in May 2002, the Minister for Planning and Infrastructure established five working groups to examine:

- Access to pastoral land;
- Aboriginal access and living areas;
- Pastoral industry economic monitoring requirements;
- Alternative models of land tenure; and
- Pastoralism for sustainability.

The working groups comprised representatives of key stakeholder groups, including the pastoral industry; Government agencies; conservation bodies; and recreational interests. Working group activities were supported and funded initially by the Department of Land Administration and subsequently by the Department for Planning and Infrastructure (following transfer of Crown land functions to this Department on 1 July 2003).

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Tel: (08) 9347 5126
Fax: (08) 9347 5009

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SUMMARY OF RECOMMENDATIONS

The following is a summary of key recommendations in relation to the terms of reference.

FIRST TERM OF REFERENCE

Consider what 2015 exclusions or prior land acquisitions are needed to cater for the increased public demand to particular areas – especially the coast and major rivers.

The working group prepared an interim report (Appendix 1), forwarded to the Minister for consideration on 21 October 2002.

SECOND TERM OF REFERENCE

Investigate the use of coordinated public access routes under the Land Administration Act 1997 to provide public liability indemnity.

Recommendation 1

Legislate for and/or amend the provisions of the relevant Acts to waive an individual's right/ability to make claim under the public liability provisions when:

- (a) travelling and/or camping on a Public Access Route (PAR); or
- (b) travelling and/or camping on a lease having been granted access to the pastoral lease by the lessee for any activity not associated with the pastoral business.

(Note this would not apply to any pastoral lessee or employee involved in pastoral business.)

Recommendation 2

That the *Land Administration Act 1997* also be amended to make it clear that if work is undertaken - either by the Crown, any party authorised by the Crown or the pastoral lessee - to construct or maintain a PAR that action does not incur liability.

Recommendation 3

If there is any doubt as to where liability should rest then that liability should rest with the Crown.

Recommendation 4

Persons who enter onto a pastoral lease under the provision of any other Act accept personal liability.

THIRD TERM OF REFERENCE

Consider ways of managing public access routes, camping and recreation areas and methods of setting appropriate fees for such management.

Recommendation 5

That, provided the recommendations of the group were adopted in regards to the second term of reference (public liability), PARs are an appropriate method to cross over or access areas within a pastoral lease provided that once approved/declared:

They don't require excision;

They remove public liability from the lessee;

Any initial infrastructure required by a declaration of a PAR is the responsibility of the Crown; and

PARs have a management agreement.

Recommendation 6

The relevant Minister would approve an application for a PAR. A pastoralist can refuse to consent to a PAR. That application may then proceed as a recommendation for an excision.

Recommendation 7

Applications should proceed on the following basis:

- There is a clearly demonstrated public interest.
- Outcomes based on consensus should be sought as a priority.
- There is minimal impact on pastoral viability and operations.
- All interested groups are notified.
- The access route is sustainable and can be provided without causing unnecessary ecological damage.
- There is a clear responsibility for ongoing management identified.

Recommendation 8

Ultimate responsibility to ensure management of PARs rests with the Crown. That responsibility could be contracted (by mutual agreement) to either:

- Local Government;
- Pastoralists; or
- Other persons (eg contractor).

Recommendation 9

That the funding of a PAR could be achieved through one or a combination of:

- The Crown;
- Relevant government agency;
- Negotiations between a relevant government agency, the PAR applicant and the pastoralist;
- Local Government; and
- Rates/tariffs or levies on major users or commercial operators.

Recommendation 10

Pastoralists and/or managers of PARs to have the ability to temporarily close them.

Recommendation 11

Low-key camping facilities on a pastoral lease, associated with a PAR, should be allowed and such facilities could be provided by the pastoralist for no charge or on a user pays basis. Where such camping facilities are not provided then casual camping should be allowed along the length of a PAR.

Fees should be reasonable and comparable with normal commercial rates.

FOURTH TERM OF REFERENCE

Consider issues relating to the proper use of miners' rights by people to access pastoral leases with recommendations to be forwarded to the Minister for State Development.

Recommendation 12

Miners' Rights be divided into two categories:
Professional prospector; and
Recreational prospector.

OTHER MATTERS

General Access Matters

Recommendation 13

All access should be managed.

Coast and beach access

Recommendation 14

Coast and beach access should be allowed for general public recreational purposes.

Access to rivers and waters

Recommendation 15

The State Government should establish legislation under which management arrangements including public access could be put in place along rivers that are used for tourism and recreational purposes in pastoral areas.

Access to and on Tourist Icons and Recreational Areas

Recommendation 16

That the recommendations outlined for PARs should apply for tourist icons and recreational areas.

Access for other Commercial Operators (eg. beekeepers, seed collectors, etc)

Recommendation 17

Other commercial operators should seek access through agreement with the pastoralist.

INTRODUCTION

Pastoral leases cover Ninety one million hectares (36%) of the State's area. Since the current structure of pastoral leases was established in 1933, new demands for rangeland use have been generated by resource development, the growth of tourism and other recreational pursuits and increased recognition of indigenous and conservation interests.

Pastoral leases in Western Australia expire in 2015.

The Government requires that the interests of all Western Australians be considered before pastoral leases covered under the *Land Administration Act 1997* are renewed.

To ensure a broad consultation with all stakeholders the Hon Alannah MacTiernan MLA, Minister for Planning and Infrastructure hosted a Pastoral Forum (The Gascoyne Muster) held over two days in May 2002 at Carnarvon.

Following the Gascoyne Muster the Hon Minister established five working groups to report on, and recommend workable solutions for, key issues confronting Western Australia's pastoral industry. The working groups brought pastoralists together with representatives of other rangeland stakeholders, including indigenous communities; mining; recreational and tourism interests; conservationists; and local and State government.

The working groups were established to investigate broad issues affecting the pastoral industry including sustainability, access, economic monitoring and tenure. Three of these groups prepared interim reports to aid the determination of land for exclusion from the 2015 renewal of pastoral leases.

The Access to Pastoral Land Working Group is to investigate and report on potential solutions to issues associated with access to pastoral lands. These issues including mining, prospecting, recreation, and tourism access, public access routes, camping, pastoralists' public liability and fees for access (Aboriginal access was allocated a dedicated working group). All five groups were requested to submit final reports to Department of Land Administration by 13 June 2003, for forwarding (with the Pastoral Lands Board's comments) to the Minister. The groups' reports are to be considered at a second Forum planned to be held in the pastoral region in August /September 2003.

TERMS OF REFERENCE

The Terms of Reference of the Working Group are to:

- Consider what 2015 exclusions or prior land acquisitions are needed to cater for the increased public demand to particular areas – especially the coast and major rivers.
- Investigate the use of coordinated public access routes under the *Land Administration Act 1997* to provide public liability indemnity;
- Consider ways of managing public access routes, camping and recreation areas and methods of setting appropriate fees for such management; and
- Consider issues relating to the proper use of miners rights by people to access pastoral leases with recommendations to be forwarded to the Minister for State Development.

WORKING GROUP MEMBERS

- **Chair, Jon Ford**, MLC, Member for Mining and Pastoral Region. Worked in the mining and hydrocarbon industries since 1981. He was elected to Parliament in May 2001.
- **Deputy Chair, Neil Parry**, A/Manager, Land Asset Management Services, Department for Planning and Infrastructure Neil has worked in the Public Service for 7 years and prior to this had extensive experience in the energy industry working for both utility providers in WA. Neil holds a Bachelor of Business (Agriculture) degree and as the Acting Manager of Land Administration Services within the Department of Land Administration is responsible for the administration of the Crown estate.
- **Patricia Maslen**, Cooralya Station, Pastoral Representative. She and her husband George own and manage Cooralya Station, located approximately 80km from Carnarvon. Prior to moving to Cooralya she was a partner in the law firm Dwyer Durack. She had her own legal practice in Carnarvon from 1991-1996.
- **Brett Pollock**, Pastoral Lessee/Manager Wooleen Station. Together with his wife Helen, Brett runs a sheep/wool and cattle station in conjunction with a successful, National award winning station-stay business, in the Murchison.
- **Marion Dolby**, Pastoralist with husband Louie and three sons from Mt Pierre Station, 130km east of Fitzroy Crossing. Member of Kimberley Aboriginal Pastoral Association (husband Louie Chairman). Aim to develop an independent and sustainable pastoral station.

- **David Etherton**, Director WA Tourism Commission
David has worked in the tourism industry in the Pilbara and Perth for the last 12 years. In this time David has been Manager of the Karratha Tourist Bureau, Manager of the WA Visitor Centre and Manager of Visitor Servicing for the WATC prior to his current role.
- **George Savell**, Chief Executive Officer of the Association of Mining and Exploration Companies Inc. (AMEC). George has also worked for 20 years as a senior executive with Pastoralists and Graziers Association (PGA) before joining AMEC in 1987.
- **Norman Halse AM**, Chairman, Recfishwest
Norman has previously in WA carried responsibilities as Director General of Agriculture, Member of Environmental Protection Authority, Member of Pastoral Lands Board and Chairman of National Parks and Nature Conservation Authority.
- **Peter Kneebone**, Councillor Shire Derby West Kimberley
Peter has lived in the Kimberley for 40 years. He has been a Shire councillor for more than 15 years, 5 years as Shire President. Peter is a member of the Kimberley Development Commission, Pastoralists and Graziers Association (PGA), North and West Kimberley Land Conservation Development Committees and the Zone Control Authority for the Agriculture Protection Board (APB). Peter was manager of Nerima Station for a short time in the 70's. Peter represents the Kimberley Shire on Kimberley Regional Fire Management Project (NHT funded) and is also a member of the Rangeland NRM group.

STAFF MEMBERS

(Department for Planning and Infrastructure)

- **Kathleen Knight**, A/Working Group Coordinator to completion of the Working Groups' Interim Reports.
- **Trevor Blight**, Working Group Coordinator from 6 January 2003.
- **Lana Harries**, Working Group Administrative Assistant.

APPROACH

The Working Group to assess Access to Pastoral Land was established on 23 July 2002.

The Group noted and accepted the Government's commitment to a viable and sustainable pastoral industry, with this commitment forming the basis of their considerations.

Each member of the group presented the desired outcomes of the stakeholders they represented and these formed the basis of the first focus of deliberations.

The group then considered all written submission as well as receiving a number of oral submissions.

The Working Group's first meeting was held in the Department of Land Administration offices at Midland on 16 September 2003 and has met 8 times over the life of the deliberations.

In May 2003 the Working Group travelled to the Kimberley region to examine particular on-site examples of access issues. It took this opportunity to meet informally with pastoralists and local government and interested persons in Derby.

Key Dates

- 26 September 2001 - Agencies (ie Local & State Government etc) formally invited to submit proposals for exclusion under the 2015 Exclusion Process.
- 26 April 2002 - Reminder letter sent to Agencies, confirming the closing date for submissions (31 August 2001).
- 17 June 2002 – Honourable Minister for Planning and Infrastructure (HMPI) wrote to all that had attended the Gascoyne Muster – Pastoral Industry Forum, including a nomination form for the Working Groups and an invitation to submit material for consideration by the groups.
- 25 July 2002 - Further letter sent, again inviting submissions.
- 21 August 2002 - Barbara Porter A/Manager Pastoral Lands Board Executive Unit attended pastoral committee meeting at the PGA and invited submissions to the Working Groups and explained the mechanism for submissions.
- 31 August 2002 - Advertisement placed in The West Australian – request for submissions to the Working Groups.
- 31 August 2002 - Closing date for Agencies to submit proposals for exclusions.
- 5 September 2002 - Advertisement placed in The Countryman and Farm Weekly – request for submissions to the Working Groups.

- 11 September 2002 - Closing date for submissions for Groups regarding exclusions.
- 16 September 2002 - First meeting of the Access to Pastoral Lands Working Groups.
- 11 October 2002 - Advertisement placed in The Countryman, Farm Weekly & the PGA “faxed newsletter” – request for submissions to the Working Groups.
- 21 October 2002 – Access, Sustainability and Aboriginal Access Working Groups to provide Interim Reports to HMPI in regard to criteria/framework for assessing exclusions from leases up for renewal in the year 2015.
- 31 October 2002 - Closing date for submissions to Groups for pastoral industry issues for the Final Report.
- 5 November 2002 - Presentation of Interim Reports from Working Groups and recommendations from Agencies to HMPI.
- 7 December 2002 - Legislative notification deadline for HMPI to advise Pastoralists of exclusions from leases due for renewal in 2015.
- 13 June 2003 - Working Groups to provide Final Report for HMPI on pastoral industry issues
- 4 July 2003 - Submission of Final Report.

DESIRED OUTCOMES AS STATED BY WORKING GROUP MEMBERS

PASTORAL

- Exclusions at first instance by Agreement only.
- First option should be given to the pastoralist for alternative use (for example tourism/recreation) provided the pastoralist demonstrates an effective management plan.
- Development opportunity passes to other stakeholders with compensation to pastoralist if no agreement is reached or if the pastoralist declines the opportunity.

ACCESS EXCLUSIONS

- Exclusion decisions must consider impact on pastoral commercial viability.
- Consideration must also be given to the requiring authority’s ability to manage.
- Access only for Defined Unique Assets.
- Take into account pastoralists’ quiet enjoyment of their pastoral leases.

MINING

- The mining industry seeks to maintain the current provisions of the *Mining Act 1978* (unchanged) with respect to access to Pastoral Leases for mineral exploration and mining purposes beyond 2015.
- With respect to exclusions of land for whatever purpose, which may be made by Government at lease renewal in 2015, all exclusions must be rigorously tested to ensure that areas which may be prospective for minerals are not quarantined through land use change and result in outcomes which are not in the best long term interests of the community; and
- Should large areas be excluded for conservation purposes that Government institute a procedure where all stakeholders contribute to the creation of a multi-purpose land use policy to ensure that mineral exploration can still be carried out under appropriate conditions.
- That Miners' Rights be preserved as an instrument to facilitate mineral search, but that a reasonable and practical means of eliminating misuse by persons not engaged in mineral search be developed.

TOURISM

- Commercial operators and free independent travellers require certainty of year-round access to relevant tourism assets.
- Commercial operators and free independent travellers require certainty of access fees with at least 18 months notice to enable operators to participate in wholesale and inbound tour programs. Fees should be reasonable in nature and magnitude.
- Commercial operators, free independent travellers and pastoralists whose land they visit require certainty regarding public liability obligations that exist once access is granted.
- To facilitate sustainable growth of the tourism industry in Western Australia, exclusions, excisions or partnerships are required to enable commercially and environmentally-sustainable development of the high quality tourism assets that exist on some pastoral stations.

LOCAL GOVERNMENT

- Land available for town site development.
- Land available for horticultural development.
- Managed off road campsites to accommodate overnight camping by travelling public.
- Manage rivers and coastline.
- Managed access to tourist icons.

RECREATIONAL/FISHING

- The public should have access through pastoral leases to the coast. Where pastoral leases lie along the coast, this should take the form of a strip excluded from the lease along the coast. Access to this strip should be provided through the lease on mutually agreed routes.
- The public should have access through pastoral leases to major rivers. The nature of this access, any excisions involved, and the rivers to which it should apply, should be determined by the appropriate Ministers on the recommendation of a community working group.
- Access to rivers or the coast should not be limited to the usage of tourism developments. Such developments and activities should only be offered as options for those wishing to access the area.
- Where local authorities or The department of Conservation and Land Management (DCLM) believe that coastal or riverine areas in pastoral areas require management, then the pastoralist can tender to provide those services but the authority for doing so must arise from the local authority or DCLM.
- That if shown to be necessary, appropriate legislative changes must be made to give effect to these principles.

DEPARTMENT FOR PLANNING AND INFRASTRUCTURE

- Consistent approach across the board.
- Legal access.
- Clear policy direction.
- General agreement on necessary legislative changes.

FIRST TERM OF REFERENCE

Consider what 2015 exclusions or prior land acquisitions are needed to cater for the increased public demand to particular areas – especially the coast and major rivers.

Background

The 2015 exclusion process is to provide a mechanism that attempts to balance these new demands against the need to ensure the future viability and sustainability of the State's pastoral industry. All pastoral leases in Western Australia issued under the now repealed *Land Act 1933* expire on 30 June 2015. An opportunity exists for the State to exclude from the lease renewal offer those areas required for "public purposes", at the time of renewal of these leases.

"Public purposes" as defined in the Land Administration Act 1997 means for the purpose of a public work within the definition of the expression "public work" in the Public Works Act 1902, conservation, a national park, a nature reserve or a purpose which serves or is intended to serve the interests of the public or a section of the public.

Section 143 of the *Land Administration Act 1997* (as amended) and condition 4 of the Offer, requires the Minister to have notified leaseholders, before 7 December 2002, of land that is to be excluded for "public purposes" at the time of pastoral lease renewal in 2015. Land excluded from pastoral leases under this process will revert to unallocated Crown land in 2015, and will be subject to the legislative clearance processes, including future act processes under the *Native Title Act 1999*, before new tenure is allocated to the land.

Report

The working group prepared an interim report, which was forwarded to the Minister for consideration on 21 October 2002. A copy of this interim report is attached at Appendix 1.

SECOND TERM OF REFERENCE

Investigate the use of coordinated public access routes under the Land Administration Act 1997 to provide public liability indemnity.

Background

The public has an increasing ability and desire to access major tourist icons, the coast and major river systems. Access to some locations will involve passing through or onto pastoral land. This access involves public liability. There is a need to develop a formal process to provide for this access and determine public liability responsibilities.

In some instances the volume of traffic does not warrant the construction of gazetted roads. Use of a station's service tracks, by agreement with the lessee, is one means of accessing pastoral land. However this type of access is best suited to one-off access requests rather than continuous, ongoing public access. It relies on the pastoralist to maintain the access route and can be revoked at any time. The pastoralist can impose a fee for access to cover maintenance of the route and the lessee carries the burden of public liability associated with such access.

Public Access Routes (PARs) systems offer an alternative cost-effective means of access in many instances. PAR access is created to provide ongoing access and to remove public liability responsibilities from the lessee of the pastoral land to which such routes pass through.

Western Australia currently has a provision for the creation of PARs under the *Land Administration Act 1997*. Although the legislation states persons travel on PARs at their own risk, there is some degree of uncertainty regarding liability for injury or property damage resulting from activities such as maintenance undertaken on these PARs because the *Land Administration Act 1997* states that the Minister is not liable to construct or maintain a PAR. If the Minister then decides to do so it might be deemed that such actions are not a *function under the division of the Land Administration Act 1997*, and that the Minister would not be covered by the exemption from liability - for functions under the division - as outlined under the *Land Administration Act 1997*. Likewise, if the pastoralist does construction or maintenance, at the request of the Minister or otherwise, they too could be deemed liable. DOLA advised the Working Group that concern regarding this lack of clarity regarding public liability responsibilities for PARs has prevented these provisions being utilised to date.

South Australia has a PAR scheme, which appears to be working successfully, and this scheme was examined in detail as a prototype on which to base amended Western Australian legislation. Seventeen PARs have been declared in South Australia, some of which have been in place for about 10 years.

Discussion

The working group discussed at length the issue of public liability associated with the use of a public access route. It was agreed liability for injury or damage incurred as a result of utilising a PAR should reside with the party that utilised that route.

The working group was also advised that legislation is being drafted to amend the relevant Acts to allow individuals to waive their right/ability to make claim under public liability provisions. Although this legislation was primarily concerned with providing an ability by which individuals can partake in “high risk” sporting and recreational activities such as horse riding, parachuting etc it might also be able to be extended to activities such as travel and camping on a PAR. It was agreed this opportunity should be investigated further as this legislation was developed.

The working group notes that South Australia has a similar public access scheme currently in place. To date seventeen public access routes have been created under that scheme. Under the South Australian legislation the public liability resides with the Minister. There are no known liability claims in relation to PARs in South Australia.

Recommendations

Recommendation 1

Legislate for and/or amend the provisions of the relevant Acts to waive an individual's right/ability to make claim under the public liability provisions when:

- (a) travelling and/or camping on a Public Access Route (PAR); or
- (b) travelling and/or camping on a lease having been granted access to the pastoral lease by the lessee for any activity not associated with the pastoral business.

(Note this would not apply to any pastoral lessee or employee involved in pastoral business.)

Recommendation 2

That the *Land Administration Act 1997* also be amended to make it clear that if work is undertaken - either by the Crown, any party authorised by the Crown or the pastoral lessee - to construct or maintain a PAR that action does not incur liability.

Recommendation 3

If there is any doubt as to where liability should rest then that liability should rest with the Crown.

Recommendation 4

Persons who enter onto a pastoral lease under the provision of any other Act accept personal liability.

THIRD TERM OF REFERENCE

Consider ways of managing public access routes, camping and recreation areas and methods of setting appropriate fees for such management.

(Note: Public Access Routes are defined under the *Land Administration Act 1997*)

Background

The public has an increasing ability and desire to access major tourist icons, the coast and major river systems.

The *Land Administration Act 1997* provides for public access routes (PAR) but makes no provision for camping along access routes. Whilst the *Land Administration Act 1997* provides for the charging of a fee to compensate pastoralists for maintenance of PARs, the provision is ambiguous.

The working group reviewed the South Australian *Pastoral Land Management and Conservation Act 1989* provisions which deal with Public Access Routes and believes the similarities in issues pertaining to pastoral leases between SA and WA and the practical approach underpinning this legislation would form a good basis for any future amendments to the *Land Administration Act 1997*.

Public Access Routes - Current provisions

The creation and management of Public Access Routes are currently dealt with under sections 63 – 71 of the *Land Administration Act 1997*.

Main features of the legislative provisions for PARs include:

- Requirement for consent of all interest holders of the land prior to the establishment of a public access route;
- Inform any native title claimants;
- Identify location of PAR on a plan.

Under the *Land Administration Act 1997*, it is an offence:

- For persons using a PAR to hinder proper management of the lands traversed by a PAR;
- To camp on a PAR or adjacent land without the consent of the interest holder.

A PAR is not the preferred arrangement for high traffic volumes. A number of options are available in such instances:

- Lease and license Crown land proposed for a PAR to an interested management body;
- Reserve and supply a management order over affected Crown land to an interested party that is prescribed or has perpetual succession;
- The relevant local authority to seek dedication of a track as a public road;
- Public access easement.

The *Land Administration Act 1997* allows any interest in land to be taken for a public work, including easements. Thus, a government agency may create an easement over leasehold land to facilitate provision of services.

Discussion

The working group discussions on this term of reference were broad and complex and at times dealt with issues covered in detail by other working groups.

Recommendations

Recommendation 5

That, provided the recommendations of the group were adopted in regards to the second term of reference (public liability), PARs are an appropriate method to cross over or access areas within a pastoral lease provided that once approved/declared:

- They don't require excision;
- They remove public liability from the lessee;
- Any initial infrastructure required by a declaration of a PAR is the responsibility of the Crown; and
- PARs have a management agreement.

PARs do not require an excision, and minimal infrastructure is required. It would generally be limited to cattle grids and or fences where the PAR crosses existing fences or boundaries. Interference therefore of a PAR to pastoral operations will be limited compared to an excised route that would require associated fences and gates.

Who approves applications?

Recommendation 6

The relevant Minister would approve an application for a PAR. A pastoralist can refuse to consent to a PAR. That application may then proceed as a recommendation for an excision.

Applications for a PAR could follow a process as described below:

Decision (Responsible Minister)

Coordinator (Responsible Agency)

Statutory timeframe..... (Overall process 12 months)

Application for a PAR

NOTIFICATION

- Register of stakeholders
- The Public
- The Pastoral Lessee
- The Local Authority

ASSESSMENT OF SUBMISSION (Responsible Agency)

- No Notification with reasons
- Yes (1) Negotiation processes
- (2) Pastoralist opts for excision

Agency recommendation to the Minister

Appeal process

Final Decision by the Minister

RECOMMENDATION 7

Applications should proceed on the following basis:

- There is a clearly demonstrated public interest.
- Outcomes based on consensus should be sought as a priority.
- There is minimal impact on pastoral viability and operations.
- All interested groups are notified.
- The access route is sustainable and can be provided without causing unnecessary ecological damage.
- There is a clear responsibility for ongoing management identified.

Note: PARs are not used for high traffic routes.

Who could apply for a PAR?

The working group identified small but significant risks if applications for a PAR had no restrictions. However there was no desire to unreasonably restrict the ability of the community to make applications for this type of access. These risks are generally associated with vexatious and unreasonable applications by individuals who are motivated by purposes other than achieving reasonable access. Consequently the Working Group believes that if applications are restricted to the following, the interests of the public can still be represented whilst mitigating the stated risks:

- Pastoral lessees
- Incorporated groups/bodies
- Local governments
- Government agencies and instrumentalities.

Management of PARs

The working group recognised that it is desirable that all land in Western Australia be managed. This is particularly important in regards to rangelands utilised by the pastoral and mining industries as well as conservation reserves.

RECOMMENDATION 8

Ultimate responsibility to ensure management of PAR's rests with the Crown. That responsibility could be contracted (by mutual agreement) to either:

- Local Government;
- Pastoralists; or
- Other persons (eg contractor).

Whilst the working group believes that any individual member of the public using a PAR should not be charged directly it understands that costs associated with the maintenance of the access needs to be met.

RECOMMENDATION 9

That the funding of a PAR could be achieved through one or a combination of:

- The Crown;
- Relevant government agency;
- Negotiations between a relevant government agency, the PAR applicant and the pastoralist;
- Local Government; and
- Rates/tariffs or levies on major users or commercial operators.

Temporary closure of PARs

RECOMMENDATION 10

Pastoralists and/or managers of PARs to have the ability to temporarily close them.

Pastoral lessees are local managers of the pastoral industry and as such have a duty of care to their employees as well as any authorised visitors to the lease to take all reasonable action to ensure the safety of these people.

Damage to PARs and other roads on the lease due to a combination of unrestricted use and weather and/or other environmental factors can cause unreasonable costs associated with the maintenance or reinstatement of these access routes.

It is therefore a reasonable proposition for pastoralists and/or the manager of the PAR to have the ability to temporarily close PARs to mitigate these risks/damage. Reasonable notification of PAR closure should be given to key PAR users (similar provisions as for Gazetted roads).

Required days and any reasons for closure should be included in the agreement for any PAR. However the pastoralist should be able to vary this condition through notification to the relevant Minister at any time.

Section 67 of *LAND ADMINISTRATION ACT 1997* requires an amendment to allow a management plan to incorporate closure of a PAR for pastoral activities and results of weather.

Casual Camping

RECOMMENDATION 11

Low-key camping facilities on a pastoral lease, associated with a PAR, should be allowed and such facilities could be provided by the pastoralist for no charge or on a user pays basis. Where such camping facilities are not provided then casual camping should be allowed along the length of a PAR.

Fees should be reasonable and comparable with normal commercial rates.

Low-key camping facilities on a pastoral lease, associated with a PAR, should be allowed and the pastoralist could provide such facility for no charge or on a user pays basis. This will give the pastoralist some ability to manage the impact of casual camping on the lease. Fees should be reasonable and comparable with normal commercial rates. Section 106 of the *LAND ADMINISTRATION ACT 1997* would need to be amended to accommodate this.

When such camping facilities are provided informal camping along the PAR should not be permitted. Where such camping facilities are not provided then casual camping should be allowed along the length of a PAR. Where a PAR traverses adjacent leases these rules would apply to each lease.

Policing of PARs could be effected by a combination of State Police and Government/Local Government Officers.

FOURTH TERM OF REFERENCE

Consider issues relating to the proper use of miners rights by people to access pastoral leases with recommendations to be forwarded to the Minister for State Development.

Background

The working group did not receive any submissions that suggested the provisions pertaining to major mining activities within the *Mining Act 1978* are not adequate. This could be attributed to what appears to be a sound and active working relationship between the pastoral and mining industries.

The working group received written and oral submissions from the Amalgamated Prospectors and Leaseholders Association (APLA) asserting that no change to miners rights was required.

However the working group did receive submissions identifying problems which appear to exist between people accessing pastoral leases under the provisions of the *Miners Right* and pastoralists.

These included but were not limited to:

- No notification of access to the lessee.
- Damage to pastoral infrastructure and roads.
- Contamination of dams, wells and watering points.
- Access for other purposes other than prospecting.
- Over-crowding in particular areas.

The working group believes the misuse of miners' rights and problems raised by submissions are significant enough to seek changes to Miners Rights.

The working group believes that the following changes to the provisions of Miners Rights would address these concerns.

Definitions

What is a Miner?

- Public or private company/partnership/individual(s) whose main business is to pursue mineral exploration & mining activities.
- Tenement holder under the *Mining Act 1978* (other than a special prospecting licence holder).

Miners also undertake and are involved and invest significantly in mineral exploration including:

- Literature surveys
- Physical field inspections
- Soil sampling
- Aerial surveys
- Scout drilling
- Expansive drilling

What is a Prospector?

- Someone who seeks/sources new surface expressions of minerals/metals.
- A tenement holder under the *Mining Act 1978*, including a special prospecting licence holder.

Prospectors can be divided into two main categories:

- Professional prospector – whose main source of income is derived from prospecting; and
- Recreational prospector.

Current Miners Right provisions

Miners' Right as defined under the *Mining Act 1978* Part III Division 1 s.20
General rights to prospect and protection of certain Crown land.

Discussion

Who can be granted a Miners' Right?

A Miners' Right should only be granted to those who are engaged in legitimate mineral search.

The working group believes a significant change to the Miners' Right is required to:

- Ensure the good working relationships between the pastoral and mining industries are maintained;
- Minimise misuse of the Miners' Right; and
- Improve effective policing.

To achieve these objectives the working group suggests the Miners' Right should be divided into two categories.

Professional Miners' Right

Professional prospectors could be defined as those who are:

- Employees of registered mining/exploration companies;
- Industry professional – membership of a recognised professional group/society;
- Persons whose main source of income is derived from prospecting or mining; and
- Persons who hold a registered/granted mining tenement(s).

Conditions of a Professional Miners' Right – Valid for 5 years

- *Mining Act 1978* to apply
- Commit to Code of Conduct – by regulation.
- No firearms, no domestic animals.
- Should not be able to remove/use timber from the pastoral lease.
- Accepts personal liability.
- Limited notification required to pastoralist. (at least a phone call or call in).
- Pastoralist able to restrict on station road access due to pastoral operations, road suitability, weather.
- Produce Professional Miners' Right or authorisation on demand.
- Persons of good character (police clearance).

The Professional Miners' Right should require validation every 5 years.

Recreational Miners' Right

The Recreational Miners' Right would be available to a genuine recreational prospector seeking access to pastoral lessees for the primary purpose of prospecting through submission of a Statutory Declaration undertaking that the miners right will only be used for legitimate mineral search.

Conditions of a Recreational Miners' Right.

- *Mining Act 1978* to apply
- Commit to a Code of Conduct (Note eg. The Code of Conduct for Mineral Exploration on Pastoral Leases sourced Chamber of Minerals and Energy, AMEC, PGA)– signed as read and understood.
- No firearms, no domestic animals.
- Accepts personal liability.
- Prior notification required to pastoralist.
- Must report arrival to pastoralist.
- Produce Recreational Miners' Right on demand.
- Persons of good character (police clearance).

The working group recognises that damage to rangelands, roads and tracks can occur through uncontrolled access. Therefore access could be refused or limited due to:

- Weather.
- Pastoral operations.
- Damage to some roads and tracks.
- Unacceptable land/environmental degradation.

The Recreational Miners' Right should require an annual validation and fee.

The Recreational Miners' Right should clearly identify the holder.

Recommendations

Recommendation 12

Miners' Rights be divided into two categories:

- Professional prospector; and
- Recreational prospector.

OTHER MATTERS

General Access Matters

Recommendation 13

All access should be managed.

The working group does not believe that unmanaged access to pastoral leases is in the public interest. All access should be managed in some manner or form.

General access not specifically covered by any Act or regulation to the pastoral lease for any activity not associated with pastoral operations and granted through consent with the Pastoralist should not attract any liability to the pastoralist.

Coast and beach access

Recommendation 14

Coast and beach access should be allowed for general public recreational purposes.

The working group believes that coast and beach access should be allowed for general public recreational purposes such as swimming, fishing etc.

Where access has been granted by either excision or exclusion considerations as outlined in this working group's Interim Report (see *Appendix 1*) should be taken into account and should be included in a management agreement.

Where access has not been granted either by excision or exclusion similar considerations as suggested in this report for PAR applications should apply and should be included in a management agreement.

Access to rivers and waters

The State has never legislated to own waters, only to manage them.

Rights in Water and Irrigation Act 1914 section 10(1) and section 21(1) allows for:

Any person may take water for domestic or ordinary use, and for watering cattle or other stock, other than those raised under intensive conditions as defined in section 21(4), from any watercourse or wetland vested in the Crown and to which there is access by a public road or reserve at the point at which the water is taken.

Whilst the Act defines the ability to take water it is not clear if any right to access the river for any other purpose exists. This is particularly apparent where there is a public demand to access rivers and waters for recreational purposes on or through pastoral leases. The working group has seen evidence where government agencies have erected signs on pastoral leases encouraging participation in tagging of fish species and to warn of crocodile attacks on non gazetted tracks on pastoral leases but has not informed the pastoralist.

Also pastoralist can believe that their lease includes the rivers and waters whilst the public and or local authorities do not. This can cause direct conflict between the various stakeholders.

It is essential and a matter of urgency that the relevant acts are amended to clarify this issue.

Recommendation 15

The State Government should establish legislation under which management arrangements including public access could be put in place along rivers that are used for tourism and recreational purposes in pastoral areas.

Management plans could be prepared on a case by case basis only where a public demand is demonstrated. Similar conditions as are recommended for PARs would be appropriate for inclusion in such management plans.

Access to and on Tourist Icons and Recreational Areas

Recommendation 16

That the recommendations outlined for PARs should apply for tourist icons and recreational areas.

Tourist icons and recreational areas must be sustainably managed. The Working Group recognises some areas need greater levels of management than others and this needs to be taken into account when establishing a management agreement. The issues to be addressed are:

- Level of use;
- Level of development required;

- Environmental/conservation considerations; and
- Cultural/heritage considerations.

The working group suggests that in most cases the recommendations outlined for PARs should apply for tourist icons and recreational areas. In some situations if a higher level of management or development is required the conditions for PARs may not be sufficient and consideration may need to be given for excision of the site.

Access for other Commercial Operators (eg. beekeepers, seed collectors etc)

Recommendation 17

Other commercial operators should seek access through agreement with the pastoralist.

Persons seeking access through licences and permits issued under other Acts should be required to enter into agreed management arrangements with the pastoral lessee(s) prior to entry.

A mechanism for dispute resolution needs to be developed.

The working group recognises there are other commercial interests that need access to pastoral land to carry out their business for example:

- Beekeepers
- Seed collectors
- Kangaroo shooters
- Sandalwood collectors
- Wildflower collectors

The access right of such commercial operators is currently not clear and should be defined.

ACRONYMS

DOLA	.....	Department of Land Administration
DPI	.....	Department for Planning and Infrastructure
LAA	.....	<i>Land Administration Act 1997</i>
AMEC	.....	Association of Mining and Exploration Companies
DCLM	.....	Department of Conservation and Land Management
PARs	.....	Public Access Routes
APLA	.....	Amalgamated Prospectors and Leaseholders Association
PGA	.....	Pastoralist and Graziers Association
APB	.....	Agricultural Protection Board
WATC	.....	Western Australian Tourism Commission

ACCESS TO PASTORAL LANDS WORKING GROUP SUBMISSIONS

Date Received	Name	Brief Description	Organisation
28/08/2002	Colin Payne	Licences on pastoral leases	Djarilmari Timber Products
30/08/2002	Jano Foulkes Taylor	Notes from Gascoyne Muster	Tardie Station
9/09/2002	Michael Clode	Would like access maintained through pastoral leases	WA 4WD Association
9/09/2002	Doug Bathgate	Access to coastal areas on pastoral leases for fishers	Recreational Fishing Advisory Committee WA
10/09/2002	Jack Cocks	Factors into access pastoral leases from his view	Lapidary Association of WA Inc
10/09/2002	Margaret Perry	ACAI code of Ethics	Australian Campers Alliance Inc
11/09/2002	George Holman	Access to pastoral leases views from recreational fishers	Australian Anglers Association (WA Div) Inc
11/09/2002	Donald Watson	Different types of access wanted on Pastoral Leases	West Australian Association of Caravan Clubs Inc
11/09/2002	Keiran McNamara	Access to pastoral leases - Beekeeping Committee	Department of Conservation and Land Management
11/09/2002	Leonie Horak	Ningaloo Reef strategy	Ningaloo Reef Outback Coast Association
19/09/2002	Austin Partnership	Problems arising at station	Austin Downs Station
19/09/2002	Leonie Horak	Access issues within NROCA	Ningaloo Reef Outback Coast Association
23/09/2002	Chris Kloss	Viewpoint of access to pastoral leases for a tour operator	Tour operator in Derby Shire
26/09/2002	Peter Green	Different Access issues, camping, recreation	Shire of Exmouth
2/10/2002	Lyndsay Stockdale	APLA views on Access issues	Amalgamated Prospectors and Leaseholders Association of WA Inc
2/10/2002	Alan Knapp	Personal Submission on access to pastoral leases	Himself
3/10/2002	Jan Scudamore	Information of Public Access Route's	Tread Lightly! Australia
7/10/2002	Dawn Martin	Public access routes requirements	Cunyu Station
14/10/2002	George Baker	Renewal of Pastoral lease	Himself
27/10/2002	Iain McGregor	Entering on to Pastoral Leases	Yerilla Pastoral Co
28/10/2002	Ms D Lefroy	Concerns on exclusion in 2015	Ningaloo Station
31/10/2002	Anne Koeyers	Problems with access control	Drysdale River

13/01/2003	John Percy	Promotes secure tenure; control of access; no exclusions without leaseholder's consent; diversification.	Lyndon Land Conservation District Committee
21/01/2003	William Burrell	El Questro submission, proposed excision	El Questro Station
22/01/2003	Roy Burton	Mineral Titles Division oral submission	Department of Minerals and Petroleum Resources
22/01/2003	Roy Burton	Booklet on prospecting in WA	Department of Minerals and Petroleum Resources
22/01/2003	Roy Burton	Mining Act 1978, Number 2	Department of Minerals and Petroleum Resources
22/01/2003	Roy Burton	Mining Act 1978, Number 5	Department of Minerals and Petroleum Resources
22/01/2003	Roy Burton	Mining Act 1978, Number 18	Department of Minerals and Petroleum Resources
21/02/2003	David Oag	Public access study report from SA Gov	Dept of water and biodiversity conservation
21/03/2003	Helen Newland	Ltr to minister re access rights on Pastoral leases	The Western Aust Farmers Federation
21/03/2003	Bill Radford	Ltr to minister re access rights on Pastoral leases	Wanna Station
25/03/2003	Carol Martin	Community Access issues	Kupungarri Aboriginal Corporation
4/04/2003	Helen Newland	Ltr to minister re access rights on Pastoral leases	The Western Aust Farmers Federation
		Speech - on Goongarrie Station	Conservation Commission of WA
2/09/2002	WG Assistant	Dividing Fences Act article	Pastoral Lines Magazine - DOLA
2/09/2002	WG Assistant	Public Access to Pastoral Lease Article	Pastoral Lines Magazine - DOLA
2/09/2002	Sandra Eckert	Arid Lands Administrators Conference	Department of Land Administration
2/09/2002	WG Assistant	Part 7 of the Land Administration Act 1997	Department of Land Administration
15/09/2002	Norman Halse	Recommendations to be considered on public access to Pastoral leases	Recfishwest
17/09/2002	Norman Halse	Public access across pastoral leases	Recfishwest
26/09/2002	WG Coordinator	Useful Web-sites	Department of Land Administration
27/09/2002	Norman Halse	Coastal reserve proposal	Recfishwest
2/10/2002	WG Coordinator	Coastal planning and management in WA	Department of Land Administration
10/10/2002	Russell Baulch	Access to pastoral lands	Land Administration Services -

		discussion paper	DOLA
14/10/2002	David Etherton	Access to Pastoral/ Mining Leases asset register	WA Tourism Commission
13/11/2002	George Savell	WA mining on Pastoral leases	Association of Mining and Exploration Companies
13/11/2002	Brendan Lay	Public Access Scoping Report	SA Government
13/11/2002	George Savell	Code of conduct for Mineral Exploration on Pastoral Leases	Association of Mining and Exploration Companies
13/01/2003	Norman Halse	Recreational fishing issues and recommendations	Recfishwest
23/01/2003	David Etherton	Pastoral Access and Tourism issues submission	WA Tourism Commission
7/02/2003	WG Coordinator	Sections from Rights in Water and Irrigation Act 1914	Department of Land Administration
11/02/2003	WG Coordinator	SA Public access to Pastoral Lands	Department of Land Administration
10/03/2003	Peter Kneebone	Shires Position on access to pastoral leases	Shire Derby West Kimberley
14/03/2003	Peter Kneebone	Shires Position on DOLA Exclusions	Shire Derby West Kimberley
2/04/2003	Brendan Lay	Public Access - summary of legal advice rec'd	SA government
17/04/2003	Jon Ford	Copy of advice received re - National Competition Policy	Department of Treasury & Finance
29/04/2003	Sandra Eckert	Copy of LexisNexis Butterworths legal advice	Chair Tenure Working Group
30/04/2003	Sandra Eckert	Access issues identified by Tenure Working Group	Chair Tenure Working Group
21/05/2003	Dan Collins	Briefing to Minister: Access to Crown Land	Department of Land Administration
21/05/2003	Dan Collins	Insurance Update on the WA Civil Liability Act	Department of Land Administration
	Eric Parks	Mining and prospecting on pastoral leases	Department of Mineral and Petroleum Resources
	Department of Ag	Outback Resource Atlas	Gascoyne Murchison Strategy
	WG Assistant	2015 exclusion references	Department of Land Administration

Attachment One

PASTORAL INDUSTRY WORKING GROUP

considering

Access to Pastoral Land

INTERIM REPORT

October 2002

Prepared by the Department of Land Administration

Attachment One

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WORKING GROUP MEMBERS

<i>Name</i>	<i>Position/Station</i>
Jon Ford, MLC	Chair
Patricia Maslen	Cooralya Station
Brett Pollock	Wooleen Station
Marion Dolby	Mt Pierre Station
David Etherton	WA Tourism Commission
George Savell	CEO, Association of Mining and Exploration
Norman Halse	Chairman, Recfishwest
Peter Kneebone	Deputy President, Shire of Derby/West Kimberley
Neil Parry	Manager, Land Administration Services, DOLA

INTRODUCTION

A Pastoral Industry forum, “The Gascoyne Muster”, was held on 4-5 May 2002. The forum focused on issues that would impact on the industry resulting from the expiry of pastoral leases in 2015. At the conclusion of the “Muster” the Hon Minister undertook to establish five working groups to investigate in detail, issues raised at that forum and to provide her with advice and recommendations which would be presented to another “Muster” for debate and consideration mid 2003.

The Working Group to assess Access to Pastoral Land was established on 23 July 2002 and has met on 16 September, and 14 October 2002.

Terms of Reference

The Terms of Reference of the Working Group are to:

- Consider what 2015 exclusions or prior land acquisitions are needed to cater for the increased public demand to access particular areas – especially the coast and major rivers;
- Investigate the use of coordinated public access routes under the *Land Administration Act 1997* to provide public liability indemnity;
- Consider ways of managing public access routes, camping and recreation areas and methods of setting appropriate fees for such management; and
- Consider issues relating to the proper use of miners’ rights by people to access pastoral leases with recommendations to be forwarded to the Hon Minister for State Development.

As part of their terms of reference the group was given a role to consider exclusion applications from pastoral leases, which expire on 30 June 2015. This Interim Report is in response to this specific term of reference.

The Working Group will now work towards completion of the Final Report, as required by the Hon Minister, due in mid 2003.

PREAMBLE

The group notes and accepts the Government’s commitment to a viable and sustainable pastoral industry, with this commitment forming the basis of their considerations.

The group also notes the short timeframe due to the legislative requirements in regard to notification of exclusions from pastoral leases in 2015, which has caused some frustration to the group. The group feels that it has not been given the opportunity to give the detailed review that they believe this important issue deserves.

However, the group has worked hard to deliver a practical framework to assist the Hon Minister to make a valued and consistent assessment of exclusion applications. The working group took the position that the final framework would be of more value if a consensus position of the whole group were taken in regard to the formulation of the framework.

Attachment One

The issue of exclusions of rivers and their surrounding systems in this instance was thought to be too complex in the context of this report and therefore the discussion has been deferred to the broader considerations of access and will be incorporated in the group's final report.

The group seeks to draw to the attention of the Hon Minister the complex issues surrounding liability risk for lessees and visitors, which must be taken into consideration when the assessment of the exclusion applications is undertaken. In formulating the Interim Report the working group attempted to concentrate on exclusion assessment by limiting debate on general access issues.

FRAMEWORK

The framework hereunder has been developed to assist the Hon Minister to make assessments of applications for exclusions. It has been tested against a number of the exclusion scenarios during general debate. This has resulted in the group developing some confidence in the framework's ability to work effectively and consistently should the Hon Minister choose to use it. This framework is designed to be used as a base tool in all considerations/assessments and in conjunction with some specific noted requirements (points **a)** to **d)** listed below) where appropriate.

THE FRAMEWORK

- 1) Exclusions and their size to be specific and justifiable in a scientific and/or public sense
- 2) Framework rules apply evenly to all leases
- 3) Exclusions must have a responsible party!
- 4) Are there other competing stakeholders?
- 5) Has the environmental impact been considered?
- 6) How does the exclusion impact on lease viability?
- 7) Is the exclusion in the greater public interest?

SPECIFIC REQUIREMENTS

a) Pastoral

- Diversification does not necessarily require exclusion and the negotiation process should take this into account. ie successful examples of well managed diverse enterprises by pastoralists already exist.
- Exclusions should be managed so as to not impact adversely on the operation of adjacent leases.
- Considerations should relate to the rangeland systems: e.g. boundaries formed by the rangeland system rather than arbitrary lines.
- Continued amenity of a pastoral lease should form part of the exclusion considerations.

b) Recreation

- Where recreational exclusions are granted then reasonable access should be included in the exclusion.

c) Mining

- Wherever any exclusion is sought where the reserve purpose would exclude mining, that the proposal be referred to the Department of Minerals and Petroleum Resources for prospective mineral assessment.
- Where exclusions are made for conservation reserve purposes, that access for mining be considered.

d) Local Government

- Where an exclusion has been proposed and would negatively impact on the Local Government resources the Local Authority should be represented in negotiations.

RECOMMENDATION

The framework for assessment as described in this report be adopted by the Hon Minister for the assessment of applications for exclusions from pastoral leases.

**Hon Jon Ford MLC
Chair
Access to Pastoral Land Working Group**

SUMMARY OF DESIRED OUTCOMES

The working group considered that the desired outcomes as noted by members in the first meeting of the Working Group, would also be of assistance to the Hon Minister in her deliberations. These should not be viewed as the consensus position of the group but rather goals for the individual members of the working group and those they are representing.

PASTORAL

- Exclusions by Agreement only
 - First option to alternative use (Tourism recreation) provided the pastoralist can demonstrate effective management plan
 - Passes to other stakeholder(s) with compensation to pastoralist.
- Access Exclusions
 - Pastoralist needs controls over access to carry out business safely!
 - Limit public liability
- Commercial Viability
 - Exclusions decisions must consider impact on pastoral commercial viability
 - Also ability to manage
- Access only for Defined Unique Assets

Tourism

- Year round access to relevant tourism assets (certainty)
- Access excisions – fees. Charges 18 months in advance.
- Public liability certainty
- Exclusions to allow appropriate sustainable development of high quality assets

Local Government

- Land available for town site development
- Land available for horticultural development
- Managed off road campsites to accommodate travelling public
- Manage rivers and coastline (local vs. overseas)
- Manage access to tourist icons

Recreational/Fishing

- The public should have access through pastoral leases to the coast. Where pastoral leases lie along the coast, this should take the form of a strip excluded from the lease along the coast. Access to this strip should be provided through the lease on mutually agreed routes.

Attachment One

- The public should have access through pastoral leases to major rivers. The nature of this access, any excisions involved, and the rivers to which it should apply, should be determined by the appropriate Ministers on the recommendation of a community working group.
- Access to rivers or the coast should not be limited to the usage of tourism developments. Such developments and activities should only be offered as options for those wishing to access the area.
- Where local authorities or DCLM believe that coastal or riverine areas in pastoral areas require management then the pastoralist can tender to provide those services, but his authority for doing so must arise from the local authority or DCLM.
- That if shown to be necessary, appropriate legislative changes must be made to give effect to these principles.

DOLA

- Consistent approach across the board
- Legal access

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