

# CHAPTER 07

## PASTORAL LEASES

### TABLE OF CONTENTS

7.	PASTORAL LEASES	7-1
7.1.	INTRODUCTION	7-1
7.2.	GRANTING A PASTORAL LEASE	7-2
7.2.1.	GRANTING OF A PASTORAL LEASE OVER UNALLOCATED CROWN LAND NOT PREVIOUSLY HELD AS A PASTORAL LEASE WHERE NO INFRASTRUCTURE EXISTS	7-3
7.2.2.	GRANTING OF A PASTORAL LEASE OVER UCL PREVIOUSLY HELD AS A PASTORAL LEASE WHERE SOME INFRASTRUCTURE MAY EXIST	7-4
7.2.3.	PUBLIC OFFERS OF PASTORAL LEASES	7-4
7.3.	CONDITIONS OF A PASTORAL LEASE	7-5
7.3.1.	TERM OF A PASTORAL LEASE	7-5
7.3.2.	PURPOSE OF A PASTORAL LEASE	7-5
7.3.3.	DEVELOPMENT AND MAINTENANCE OF IMPROVEMENTS	7-5
7.3.4.	MANAGEMENT OF A PASTORAL LEASE	7-5
7.3.5.	STOCKING OF A PASTORAL LEASE	7-6
7.3.6.	SOIL CONSERVATION	7-7
7.3.7.	DECLARED PLANTS AND ANIMALS	7-7
7.3.8.	ANNUAL RETURNS	7-7
7.3.9.	PAYMENT OF RENT	7-7
7.3.10.	RESERVATION IN FAVOUR OF ABORIGINAL PERSONS	7-7
7.4.	PERMITS	7-8
7.4.1.	TYPES OF PERMITS	7-8

7.4.2.	STATUTORY REQUIREMENTS	7-9
7.4.3.	APPLICATION PROCESS	7-9
7.5.	ASSESSMENT OF RENT	7-10
7.5.1.	5 YEARLY RENT REVIEWS	7-10
7.5.2.	OBJECTIONS AND REVIEWS	ERROR! BOOKMARK NOT DEFINED.
7.5.3.	VARIATION OF RENT IF A PERMIT IS ISSUED	7-10
7.6.	INSPECTION OF PASTORAL LEASES	7-11
7.7.	DEFAULTS AND FORFEITURE	7-12
7.7.1.	ISSUING OF A DEFAULT NOTICE	7-12
7.7.2.	PROSECUTION FOR FAILURE TO COMPLY WITH A DEFAULT NOTICE	7-12
7.7.3.	ISSUING A FORFEITURE NOTICE	7-13
7.8.	ABANDONMENT OF A PASTORAL LEASE	7-14
7.8.1.	CONTROL AND MANAGEMENT	7-14
7.8.2.	APPEALS	7-14
7.8.3.	COSTS INCURRED BY BOARD CONTROL	7-14
7.9.	SALES AND TRANSFERS	7-15
7.9.1.	APPROVAL TO SELL	7-15
7.9.2.	APPROVAL TO TRANSFER	7-15
7.9.3.	RESTRICTION ON TRANSFER OF SHARES IN COMPANIES	7-16
7.9.4.	MAXIMUM AREA	7-17
7.9.5.	FOREIGN OWNERSHIP	7-18
7.10.	MORTGAGES OVER PASTORAL LEASES	7-19
7.11.	SUBDIVISION OF A PASTORAL LEASE	7-20
7.11.1.	BACKGROUND	7-20
7.11.2.	PROCESS	7-21
7.12.	AMALGAMATION OF PASTORAL LEASES	7-22
7.12.1.	AMALGAMATION OF ENTIRE LEASES	7-22
7.12.2.	AMALGAMATION OF PART LEASES	7-23
7.13.	ADJUSTMENT OF BOUNDARIES	7-24
7.14.	PASTORAL BUSINESS UNITS	7-25
7.15.	RENEWAL OF PASTORAL LEASES	7-26
7.15.1.	RENEWAL OF PASTORAL LEASES ISSUED UNDER THE <i>LAND ACT 1933</i>	7-26
7.15.2.	RENEWAL OF PASTORAL LEASES ISSUED UNDER THE <i>LAND ADMINISTRATION ACT 1997</i>	7-27
7.15.3.	COMPENSATION FOR IMPROVEMENTS ON EXPIRY OF PASTORAL LEASES	7-27

7.16.	SHARED WATERS ON PASTORAL LEASES	7-28
7.16.1.	CREATION OF AN EASEMENT	7-29
7.17.	DIVIDING FENCES	7-30
7.18.	PUBLIC ACCESS ON PASTORAL LEASES	7-31



# 7. PASTORAL LEASES

## 7.1. INTRODUCTION

Part 7 of the *Land Administration Act 1997* (LAA) provides the current legislative basis for the granting and administration of pastoral leases over Crown land in Western Australia. It also provides for the establishment of a Pastoral Lands Board to oversee the administration of such leases.

All pastoral leases currently in place were granted under the new repealed *Land Act 1933* but continue in existence as if they had been granted under the LAA.

A pastoral lease allows the lessee to graze authorised stock on the lease using methods of best pastoral and environmental management practice.

All current pastoral leases expire on 30 June 2015. Provisions under the former *Land Act 1933* allowed for pastoral lessees to apply to the Minister for lease renewal. Most lessees were given and accepted a conditional offer to renew in 2015.

Under the LAA, there are provisions for a pastoral lessee to apply for a permit to undertake commercial activities supplementary or ancillary to the pastoral business. The principle behind these provisions is to provide opportunities for pastoralists to diversify and attract additional income so that it remains a viable option for pastoral lessees to remain on their lease, particularly during poor returns on produce from traditional pastoral lease activities.

The Pastoral Lands Board (“the Board”) is appointed by the Minister, (section 97 of the LAA) to advise the Minister on policy relating to pastoral leases and administers the leases in accordance with the LAA: section 95(a) of the LAA. The Board therefore has the roles of ensuring lease compliance, developing policies relating to the prevention of rangeland degradation and monitoring of rangeland condition.

The Board consists of a chairperson and 7 other members (section 97 of the LAA) of whom:

- 3 are persons who hold or who have held an interest in a pastoral lease either individually or as shareholders in a company with a beneficial interest in a pastoral lease;
- the Director General of Agriculture;
- the Director General of RDL;
- a person with expertise in the field of flora, fauna or land conservation management; and
- an Aboriginal person with experience in pastoral leases.

The Pastoral Lands Board meets approximately every six weeks. The majority of the meetings are held at the Board offices in the LANDGATE Building in Midland. It does, however, hold at least one meeting a year in regional centres. At these times, the Board also holds an open meeting at which pastoral lessees may discuss issues affecting the industry.

## 7.2. GRANTING A PASTORAL LEASE

The Minister may grant pastoral leases under section 101 of the LAA for a term of up to 50 years (section 105(1) of the LAA) after receiving advice from the Pastoral Lands Board. A pastoral lease may not be granted unless the Pastoral Lands Board is satisfied that the lease will be capable, when fully developed, of carrying sufficient authorised stock to enable it to be worked as an economically viable and ecologically sustainable pastoral business unit: section 101(5) of the LAA.

Due to the size, and sometimes the natural features, pastoral leases are not always surveyed. In the absence of a survey, pastoral leases are described by technical description or defined by GPS coordinates. In most cases where one of the boundaries is the coastline that boundary will be 40 metres above the high water mark.

### 7.2.1. GRANTING OF A PASTORAL LEASE OVER UNALLOCATED CROWN LAND NOT PREVIOUSLY HELD AS A PASTORAL LEASE WHERE NO INFRASTRUCTURE EXISTS

This would generally be instigated by an application from an external party wishing to take up land for pastoral purposes. Before a pastoral lease can be granted, advice and clearances must be obtained from various agencies.

In the first instance, Pastoral Land Business Unit would seek advice from the Department of Agriculture in respect to pastoral potential and stock carrying capacity of the land under application.

The Department of Agriculture advice would then be considered by the Pastoral Lands Board and it would decide whether the proposed site is likely to be a viable proposition given the pastoral potential, stock-carrying capacity and development costs. If the Pastoral Lands Board decides that the site would be viable, further clearances would need to be obtained from:

- Environmental Protection Authority - advice on any negative impacts due to grazing of domestic stock;
- Conservation and Land Management – advice on any rare flora or fauna existing and any areas that are of specific conservation value;
- Local Government body – courtesy advice seeking comments to the proposal;
- Main Roads WA – if a main road is passing through or adjoining the proposed lease advice should be sought as to the adequacy of the width of the road;
- Manager State Land Services, Lands Division – to determine if there are any other land use requirements for the area;
- *Native Title Act* – requirements of the Act and current State policy would need to be considered in respect to Native Title rights and interests;
- Valuer General – to determine the ground rent that the land might reasonably be expected to realize in good condition, for a long term lease for pastoral purposes under which normal outgoings are paid by the lessee;
- Survey and drafting requirements would need to be considered on a case-by-case basis. Should it be determined that survey is required it should be by limited marking techniques and costs should be recouped from the incoming lessee. It may be that a technical description will be sufficient to describe the boundary with a deposited plan being drawn: and
- Other Government agencies if required.

If the site is considered to be economically viable and all clearances mentioned above have been obtained the Pastoral Lands Board will make a formal recommendation to the Minister, which will suggest the lease term and conditions and method of release. If the Minister approves the release of the site a release will be undertaken by Pastoral Lands Business Unit staff.

### **7.2.2. GRANTING OF A PASTORAL LEASE OVER UCL PREVIOUSLY HELD AS A PASTORAL LEASE WHERE SOME INFRASTRUCTURE MAY EXIST**

This may be instigated by the Pastoral Lands Board following forfeiture or cancellation of a pastoral lease or by an application from an external party wishing to take up land formerly held as a pastoral lease.

The fact that the land has previously been held as pastoral lease does not necessarily mean that it is viable in the current economic environment and for its current rangeland condition. Given that circumstances may have changed since the land was previously released for pastoral leasing purposes in the first instance, the Pastoral Land Business Unit would seek advice from the Department of Agriculture and Food WA in respect to pastoral potential and stock carrying capacity.

The Department of Agriculture and Food WA advice would then be considered by the Pastoral Lands Board and it would decide whether the proposed site is likely to be a viable proposition given the pastoral potential, carrying capacity and re-development costs. If the Pastoral Lands Board decides that the site would be viable further clearances would need to be obtained as required under [Paragraph 7.2.1](#).

The Valuer General would also be asked to provide a valuation of the fixed improvements that remain on the lease site.

Providing the proposed re-release of the land is the same land description as previously held as a pastoral lease then a current graphic will exist and be acceptable.

If the site is considered to be economically viable and all clearances mentioned above have been obtained the Pastoral Lands Board will make a formal recommendation to the Minister, which will suggest the lease term and conditions and method of release. If the Minister approves the release of the site, a release will be undertaken by Pastoral Lands Business Unit staff.

### **7.2.3. PUBLIC OFFERS OF PASTORAL LEASES**

A pastoral lease may only be granted after a public competition process has been undertaken. Advertising must be undertaken in a daily newspaper circulating throughout the State. Under section 102 of the LAA, the public competition process for a proposed pastoral lease may be by offer for sale, public auction, public tender or expressions of interest. Appendix E - Table C of the Crown Administration and Registration Practice Manual refers to the General Conditions of a pastoral lease under section 101 of the LAA.

## **7.3. CONDITIONS OF A PASTORAL LEASE**

### **7.3.1. TERM OF A PASTORAL LEASE**

A pastoral lease can be granted any term up to 50 years (section 105 of the LAA) and the term must be specified in the grant.

### **7.3.2. PURPOSE OF A PASTORAL LEASE**

A pastoral lease may be used for pastoral purposes which is defined in section 93 of the LAA to mean:

- the commercial grazing of authorised stock;
- agricultural, horticultural or 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, subject to a permit being issued (if required); and
- activities ancillary to the activities mentioned in the two preceding paragraphs subject to a permit being issued (if required).

### **7.3.3. DEVELOPMENT AND MAINTENANCE OF IMPROVEMENTS**

The lessee must maintain in good condition all lawful improvements on the lease.

If the Pastoral Lands Board is of the opinion that reasonable development of the lease requires improvements to be made, it may request the lessee to submit a development plan, commonly known as a management plan, for the progressive development of those improvements over a specified timeframe: section 107 of the LAA.

### **7.3.4. MANAGEMENT OF A PASTORAL LEASE**

The lessee at all times must manage and work the land under the lease to its best advantage as a pastoral property, to the satisfaction of the Pastoral Lands Board: section 108 of the LAA.

Under section 108(2) of the LAA the lessee must use methods of best pastoral and environmental management practice, appropriate to the area where the lease is situated, for the management of stock and for the management, conservation and regeneration of the pasture for grazing.

The lessee must maintain the indigenous pasture and other vegetation on the land under the lease to the satisfaction of the Pastoral Lands Board and the Commissioner of Soil and Land Conservation: section 108(4) of the LAA.

The lessee must not remove trees or clear land under the lease or disturb its soil, except:

- as permitted under the lease;
- as necessary for the construction of permitted improvements; or
- in accordance with a permit.

A penalty of \$10,000 is prescribed in section 109 of the LAA.

The lessee must not sow or cultivate non-indigenous pasture on land under the lease, except in accordance with the permit: section 110(1) of the LAA.

### 7.3.5. STOCKING OF A PASTORAL LEASE

The lessee must stock the lease with authorised stock. Authorised stock is prescribed in regulation 17C of the *Land Administration Regulations 1998* as sheep, cattle, horses and animals kept for domestic purposes.

Prohibited stock (anything that is not authorised stock) may only be kept on a pastoral lease if a permit has been issued.

The Pastoral Lands Board may from time to time determine the minimum and maximum stock numbers and their distribution over the lease in accordance with the factors set out in section 111 of the LAA.

Stock may only be taken on agistment if prior Pastoral Lands Board approval has been granted: section 111(2) of the LAA. In this instance a lessee would need to apply to the Pastoral Lands Board, in writing, advising details as to the type and number of stock, the commencement and finishing dates and the paddocks in which the stock will be held.

The Pastoral Lands Board may on application from a pastoral lessee consider allowing the destocking of a pastoral lease for up to 3 years and would consider such for reasons including the following:

- when the lease is badly degraded, and destocking will aid rehabilitation;
- when a conservation reserve is being created;
- when the lessee can clearly demonstrate that maintaining stock on the lease will conflict with other, legitimate forms of land use on the lease; or
- when the lease is in transition to another form of tenure.

A lessee wishing to destock a pastoral lease must in the first instance apply in writing to the Pastoral Lands Board providing:

- the reasons for the request;
- details of the length of time the lease is proposed to be destock;
- a management plan of the lease for the period of destocking with particular reference to maintenance of infrastructure and control of feral animals;
- an inventory of the current infrastructure;
- a plan for restocking the lease.

Pastoral Land Business Unit will request the Department of Agriculture and Food WA to undertake an inspection and provide comment as to the appropriateness of the application and confirm the inventory and condition of the infrastructure.

Once this information is received the Executive Officer will place the matter on the agenda for consideration at the next Pastoral Lands Board meeting.

If the Pastoral Lands Board grants approval to destock it would be subject to:

- the lessee maintaining the pastoral infrastructure and continuing to undertake feral animal control during the destocking period;
- An annual inspection being undertaken at the lessees cost to ensure compliance with the management plan. Non-compliance may result in a default notice being issued.
- the Board may require the lessee to enter into a performance bond or bank guarantee.

Please refer to Appendix E - Table B of this manual for policy details.

### 7.3.6. SOIL CONSERVATION

The lessee must maintain the land under lease in good and improving soil and plant condition.

Management of pastoral leases also has implications under the *Soil and Land Conservation Act 1945*. Under this Act, the Commissioner for Soil and Land Conservation may serve a Soil Conservation Notice for failure to take adequate steps to prevent land degradation, soil erosion, salinity or flooding. A Soil Conservation Notice may require an area of the lease to be taken out of production or remedies to be made.

Section 112 of the LAA deals with the effect of a Soil Conservation Notice on the obligations of the Pastoral lessee.

### 7.3.7. DECLARED PLANTS AND ANIMALS

A pastoral lessee must control declared plants and animals on the land in compliance with the *Agriculture and Related Resources and Protection Act 1976* and to the satisfaction of the Pastoral Lands Board.

### 7.3.8. ANNUAL RETURNS

As provided in section 113 of the LAA, a pastoral lessee must, after 30 June in each year and not later than 31 December in that year, submit to the Pastoral Lands Board a return in the approved form providing information required by the Pastoral Lands Board relating to the land under pastoral lease or activities on the land for which a permit has been issued. The return is usually provided in the form of a declaration.

The penalty for failure to submit a return by the required date is up to \$2,000 and a daily penalty of up to \$200. Knowingly providing false information or failing to provide any information without reasonable excuse could result in a penalty of up to \$8,000 or imprisonment for up to 12 months.

Prior to 30 June each year, the Pastoral Lands Board will review the Stock and Improvements Return (Declaration). A Return (declaration) agreed to by the Pastoral Lands Board then needs to receive the approval of the RDL Director General under section 278 of the LAA.

In July each year, Pastoral Land Business Unit staff will send two blank returns (declarations, one copy to be retained by the lessee) to each pastoral lessee and request that it be completed and returned by 31 December of that year.

If the return (declaration) has not been submitted by the appointed day, a default notice will be issued requiring the default (that is: the failure to submit the Stock and Improvements Return (declaration) to be rectified within 30 days. Failure to comply with the default notice will lead to prosecution. Refer to [Paragraph 7.7.2](#).

### 7.3.9. PAYMENT OF RENT

The annual rent is to be paid in advance in two equal instalments due on 1 January and 1 July each year. Interest at the prescribed rate may be charged on overdue payments. RDL's Financial Services Branch will forward statements each January and July.

### 7.3.10. RESERVATION IN FAVOUR OF ABORIGINAL PERSONS

Aboriginal persons may at all times enter upon any unenclosed or unimproved parts of a pastoral lease to seek their sustenance in their accustomed manner: section 104 of the LAA.

## 7.4. PERMITS

A pastoral lessee may apply for a permit to use land within a pastoral lease for non-pastoral activities. This is a new concept provided for in Division 5 sections 115 to 122A of the LAA. The permit system was introduced to provide pastoral lessees with the opportunity to:

- undertake some form of diversification and gain additional income to supplement the income derived from the pastoral business; and
- improve the carrying capacity of the lease.

Amendments to the LAA in December 2000 provide that only **authorised** stock may be kept on a pastoral lease unless a permit is issued to keep or sell **prohibited** stock. Authorised stock is prescribed in the LAA Regulations – regulation 17C as sheep, cattle, horses and any animals kept for domestic or household use. Prohibited stock is any other “stock” (refer to definition at section 3 of the LAA).

A permit may only be issued to the registered pastoral lessee. It should be noted that a permit is **not** a registrable interest in the land. It is another land use activity permitted on the land. Permitted activities other than the keeping of prohibited stock must be supplementary to the pastoral business.

If an alternative land use is required by a party other than the pastoral lessee and the Minister has agreed to grant a new lease by some means, a surrender of the land from the pastoral lease would be required with a view to obtaining a separate lease under section 79 of the LAA. This is covered in [Chapter 6](#) of this manual.

### 7.4.1. TYPES OF PERMITS

Permits may be issued for:

- **Clearing of land** for the purpose of promoting the growth of indigenous pasture or otherwise facilitating or improving the working of the lease: section 118 of the LAA. See approved Form LAA-1064.
- **Sowing of non-indigenous pastures** to increase the carrying capacity of the lease or for sale of any produce of the pasture: section 119 of the LAA. See approved Form LAA-1037.
- **Agricultural uses of land** for crop, fodder, horticultural or other kind of agricultural production providing that the proposed use is reasonably related to the pastoral use of the land: section 120 of the LAA. See approved Form LAA-1035.
- **Tourist purposes** to allow the lessee to use specified land for pastoral-based tourist activities of a specified kind if the activities will be purely supplementary to pastoral activities on the land: section 121 of the LAA. See approved Form LAA-1063
- **Non-pastoral use of enclosed and improved land:** section 122 of the LAA. See approved Form LAA-1036 **keeping or selling prohibited stock:** section 122A of the LAA. *(No approved form)*

***Please note forms are prepared and lodged by RDL staff only.***

### 7.4.2. STATUTORY REQUIREMENTS

The Pastoral Lands Board is not able to issue a permit unless it is satisfied that any requirements are met in relation to:

- The *Agriculture and Related Resources Protection Act 1976*: section 117(a) of the LAA;
- The *Environmental Protection Act 1986*: section 117(b) of the LAA;
- The *Soil and Land Conservation Act 1945*: section 117(c) of the LAA;
- The *Wildlife Conservation Act 1950*: section 117(d) of the LAA; or
- Any other written law relating to environmental conservation which is applicable to the land under the lease: section 117(e) of the LAA;
- The Commonwealth *Native Title Act 1993*: and
- Other Government agency Acts, if required.

### 7.4.3. APPLICATION PROCESS

#### STEP 1 PREPARE APPLICATION FOR A PERMIT

Applicants will first need to complete the Application for Permit (Refer Appendix E – Table C1). The application, a plan (where required) and fees (of an amount as determined from time to time by the Board) are to be forwarded to the Pastoral Lands Board.

Applicants are encouraged to contact Pastoral Land Business Unit to discuss the proposal prior to applying. All lessees must sign the Application.

#### STEP 2 CONDITIONAL PRE-APPROVAL

Conditional approval to proceed and seek clearances and referrals is usually given within 14 days of receiving an Application for relatively small-scale projects.

Complex or significant proposals will need to be dealt with by the full Board. In these cases, applicants will be advised of the date when their proposal will be considered. Up-front consideration of the proposal and conditional approval, or otherwise, will ensure that time is not wasted on obtaining clearances if the proposal is not suitable for a permit

#### STEP 3 ADVICE TO APPLICANT ON CLEARANCE REQUIREMENTS

When conditional approval has been given, the Board will send the applicant:

- Advice of conditional approval;
- A Clearance and Referral Checklist covering required clearances and referrals.
- Pastoral Land Business Unit will deal with referrals and initiate clearances with other government agencies where possible. The applicant will be responsible for seeking approval from the Commissioner for Soil Conservation to clear land and applying to Water and Rivers Commission for a water licence or Department of Fisheries for an aquaculture licence (where applicable).
- A list of conditions proposed to be included in the permit.

#### STEP 4 COMPLETION OF CLEARANCE PROCESS

When all clearances have been obtained, copies are to be forwarded to Pastoral Land Business Unit.

#### STEP 5 ISSUE OF PERMIT

The Board will issue a permit to the applicant once all requirements have been met. In some cases a permit may be required prior to the issue of a water extraction licence or aquaculture

licence. The Pastoral Land Business Unit has developed an application kit which provides information on permits and the application process. Refer Appendix E - Tables C1, C2 and C3 – of this manual.

## **7.5. ASSESSMENT OF RENT**

The annual rent payable for a pastoral lease is assessed by the Valuer-General on the basis of a ground rent that the land may be reasonably expected to realize in good condition, for a long term lease for pastoral purposes under which normal outgoings are paid by the lessee. The rent is reviewed every 5 years. The next review is due to take effect from 1 July 2004 and every five years thereafter: section 123 of the LAA.

### **7.5.1. 5 YEARLY RENT REVIEWS**

Around 18 months prior to the review date, the Pastoral Lands Board will usually write to the Valuer-General and request him to initiate a project to review the annual rent for all pastoral leases.

The Valuer-General will provide the Board with project description and costing of the project. The Board will then make the appropriate allowance in the budget for the project to proceed.

The Board will also provide any data requested by the Valuer-General which will assist in the re-assessment process.

In accordance with section 123(2) of the LAA, the Valuer-General will consult with the Board with regard to the economic state of the pastoral industry. The Board will provide such advice before the Valuer-General determines the rent.

The final rents determined should be provided to the Board around April prior to the review date in order that RDL Financial Services can input the data into its database for production of accounts. The Valuer-General should also advise each Local Government Authority as the rates are based on the valuation of the pastoral lease rental, that is, twenty times the annual rent is the capital unimproved value of a pastoral lease for rating purposes. Each Local Government will then determine the rating system to be used under the *Local Government Act 1995*.

### **7.5.2. OBJECTIONS AND REVIEWS**

Part IV of the *Valuation of Land Act 1978* applies to the assessment of pastoral lease rents and therefore any reviews and objections to the assessment of annual rent under a Pastoral Lease or to a determination of the value of improvements, must be made under that Act: section 126 of the LAA.

Lessees wishing to object to a lease determination should contact the Valuer-General's Office. A formal objection must be lodged within 42 days of the issue of the rent notice. Complaints against an increase in rent are not valid grounds for an objection. A lessee must be able to substantiate that the rent has been incorrectly determined.

### **7.5.3. VARIATION OF RENT IF A PERMIT IS ISSUED**

If the Pastoral Lands Board has issued a permit under Division 5 (refer to [section 7.4](#)), section 124 of the LAA, the annual rent for the pastoral lease may be varied to take into account the permitted activity. The Pastoral Lands Board will contact the Valuer-General providing all details about the permit application and seek a determination as to whether a revised rent should apply.

## 7.6. INSPECTION OF PASTORAL LEASES

The inspection of pastoral leases for the Pastoral Lands Board is usually undertaken by the Department of Agriculture and Food WA. Under a Memorandum of Understanding between the Pastoral Lands Board and the Department of Agriculture and Food WA, pastoral leases are inspected in accordance with a pre-determined schedule to determine compliance with lease conditions.

The inspection report is called a Range Condition Assessment (RCA). RCA's are forwarded digitally to Pastoral Land Business Unit by the Department of Agriculture and Food WA when completed. The reports provide data on range condition, infrastructure, recommended management actions and carrying capacities. The reporting officer may also make recommendations for the Pastoral Lands Board. A draft of the report is also forwarded to the lessee by the Department of Agriculture and Food WA.

All RCA's when received are listed as agenda items for consideration by the Pastoral Lands Board. The Board may accept, amend or seek more information in respect to the report and may require actions by a lessee depending upon the issues raised. For example, a lessee may be requested to prepare a management plan (either whole of station or to address a specific area of concern) or be asked to reduce or destock an area on the lease or attend to some infrastructure maintenance.

Following a Pastoral Lands Board meeting, the Executive Assistant should forward a copy of the approved report to the lessee and advise of any requirements or determinations of the Board. Any actions to be undertaken by the lessee will be monitored by the Executive Assistant Pastoral Land Business Unit. The Department of Agriculture and Food WA may be asked to undertake follow up inspections at a pre-determined time to check on compliance.

## **7.7. DEFAULTS AND FORFEITURE**

If a pastoral lessee fails to comply with the LAA, any lease or permit conditions, any condition or determination made by the Board, or the conditions of a soil conservation notice, the Pastoral Lands Board may issue a default notice under section 129 of the LAA. This also includes failure to submit the annual Livestock and Improvements Declaration (that is the annual return which must be submitted under section 113 of the LAA).

If a lessee fails to comply with a default notice the Minister may proceed to prosecution or forfeiture or both.

### **7.7.1. ISSUING OF A DEFAULT NOTICE**

Prior to issuing a default notice, there should have been written correspondence to the lessee advising of any breaches or requirements and detailing the required response to rectify the breach or to meet the requirements. A default notice will be issued when a lessee has failed to comply within a reasonable time without any legitimate mitigating circumstances. It is used as a last resort to enforce compliance.

A default notice should be completed accurately and specify the provision, condition, determination or notice with which the lessee has failed to comply. It also needs to specify what actions are required and timeframes for remedy. In addition, it informs the lessee that failure to comply could result in a fine, the forfeiture of the lease, or both. A default notice will usually be issued in the approved form (see Approved Form LAA-1051). *Please note forms are prepared and lodged by RDL staff only.*

The determination to issue a default notice is made by the Pastoral Lands Board at a Board meeting. A default notice, when completed, must be signed by the Chairman and is sent to the lessee at the last known address and also the address of the registered lessee, by registered post.

### **7.7.2. PROSECUTION FOR FAILURE TO COMPLY WITH A DEFAULT NOTICE**

If a pastoral lessee fails to comply with a default notice within the specified timeframe, the Minister may instigate prosecution proceedings for an offence against the LAA, or issue a notice of intention to forfeit the lease, or both. It is an offence to fail to comply with a default notice: section 130 of the LAA.

Prosecution for offences is made under the *Justices Act 1902* and a complaint must be laid before the Court of Petty Sessions. The Court will deal with the complaint under its usual procedures. The lodgement of a complaint must be made on the appropriate form at the nearest Court to where the offence took place and within 12 months of the offence being committed.

An offence may incur a penalty of up to \$50,000 and a daily penalty of \$1,000.

The Legal Services Branch of RDL would manage the prosecution process.

### 7.7.3. ISSUING A FORFEITURE NOTICE

If a pastoral lessee fails to comply with a default notice within the specified timeframe, the Minister may instigate forfeiture action under section 35 of the LAA to terminate the Pastoral Lease, in addition to, or instead of, proceeding to prosecution. More information about the forfeiture process can found in [Chapter 2](#) of this manual.

The Pastoral Lands Board would consider the circumstances and recommend a course of action to the Minister. If the Minister proposes to proceed with forfeiture, a Notice of Intention to Forfeit is prepared for the Minister's signature. The Notice, once signed, would be forwarded by registered post to the registered lessees, who may lodge an appeal within 30 days: section 35(2) of the LAA. Any interest holders in the lease, for example, mortgagees, must also be advised of the intention to forfeit.

The lessee may appeal under section 37(1) of the LAA against the intent to forfeit by application to the Minister for Lands. The appeal is lodged with the Minister, but is determined by the Governor: section 38 of the LAA. If an appeal is lodged within the specified period, then under section 38 of the LAA, a submission from the Minister to the Governor in Executive Council must be prepared. The submission must set out the background, the grounds of the appeal, the Minister's comments on those grounds, and a recommendation. The Governor may seek his own advice and must decide to either dismiss or uphold the appeal. The Governor must then advise the Minister for Lands in writing of his decision. The Minister is then required to notify the appellant in writing of the Governor's decision: section 39 of the LAA, see [Chapter 3](#) of this manual.

If there is no appeal or an appeal is dismissed, a Forfeiture of Lease Order (Approved Form LAA-1020 - *please note forms are prepared and lodged by RDL staff only*) will be prepared and forwarded by RDL to the Minister for signature prior to advising the registered lessees and other interest holders. The Order document will then be lodged for registration. All LANDGATE and Pastoral Land Business Unit records are then to be amended. The land in the forfeited Pastoral Lease becomes unallocated Crown land and all improvements remaining on the land become the property of the Crown (subject to payment of the value to the lessee, if the Minister considers it appropriate). The Pastoral Lands Board will then consider whether the land should be re-released for pastoral purposes. ([Paragraph 7.2.2](#)).

The Forfeiture of Lease Order may allow an existing sublease or caveat to continue, despite the forfeiture. The forfeiture of a lease does not release the lessee from its liability to pay outstanding rent and interest accrued to the date of forfeiture.

If an appeal is upheld by the Governor, the registered lessees will be advised, as will other interest holders, and the pastoral lease will continue. Normal processes to ensure compliance will also continue.

## 7.8. ABANDONMENT OF A PASTORAL LEASE

If the Pastoral Lands Board is of the opinion that a pastoral lease has been abandoned, or otherwise left without proper care, control and management, it may recommend to the Minister that the Board be authorised to assume temporary care, control and management of the lease: section 133 of the LAA. This can be particularly important as the lease may still be carrying stock and therefore continuing management is essential.

### 7.8.1. CONTROL AND MANAGEMENT

By Ministerial Order under section 133(1) of the LAA, the Pastoral Lands Board or its agents may assume control over a pastoral lease until the Board is satisfied that:

- the lessee has assumed control or control has been assumed by some other person entitled to do so, such as the mortgagee; or
- the pastoral lease has expired or been forfeited and the land is not to be made available again for pastoral purposes.

The Ministerial Order must be registered although under section 133(5) of the LAA it is valid from the time it is issued. Any mortgagees should be advised of the situation.

The Pastoral Lands Board, upon issue of an order, would usually immediately retain a capable station manager to be placed on the property as caretaker. A caretaker would be employed under short-term contract. The Board will then make an assessment of the condition of the rangeland, infrastructure and stock and whether it is likely that the lessee will return to the property.

### 7.8.2. APPEALS

If a pastoral lessee is aggrieved he may lodge an appeal with the Minister for determination by the Governor in the same manner as described under [Paragraph 7.7.3](#) (section 37-40 of the LAA). An appeal must be lodged within 30 days of the Board being authorised by the Minister to take management control of the lease. The Minister may, however, allow a longer period if special circumstances apply: section 133(3) of the LAA.

### 7.8.3. COSTS INCURRED BY BOARD CONTROL

Section 133(4) of the LAA provides that any costs incurred by the Board in management of the lease are a charge against the lease and take priority over other charges against the lease. These costs are recoverable from the lessee, by the Minister in a court of competent jurisdiction, as a debt due to the Crown.

## 7.9. SALES AND TRANSFERS

The Pastoral Lands Board is responsible for making recommendations to the Minister with respect to the sale and transfer of pastoral leases. The Executive Officer, Pastoral Land Business Unit may exercise delegated authority on behalf of the Minister under sections 18 and 134 of the LAA, which deal with these matters.

A Pastoral Lease cannot be sold nor transferred without prior Ministerial approval.

### 7.9.1. APPROVAL TO SELL

When a lessee wishes to offer its Pastoral Lease for sale it must first apply in writing to the Pastoral Lands Board advising its intention. Appendix E - Table E of this manual details the Pastoral Lands Board policy in respect to sale and transfer of a pastoral lease.

Pastoral Land Business Unit staff will then determine when the last inspection was undertaken. If this has been within the last 3 years and there were no land resource and/or infrastructure issues at the time of inspection, generally but not always, approval to sell will be granted. The approval will be subject to the standard conditions of transfer of a pastoral lease as per Appendix E - Table E. Other conditions of transfer may be imposed. Permission to sell will be valid for 12 months. If the lease is not sold within that time the lessee must re-apply for permission to sell.

If the last inspection was undertaken more than 3 years previously, or there were land resource and/or infrastructure issues, the Department of Agriculture and Food WA will be asked to undertake a fresh inspection and provide the Board with a RCA. The RCA will then be tabled at the next Pastoral Lands Board meeting for consideration. The Board will consider the report and any other factors and recommend conditions of sale to apply. The Board may include specific conditions that relate to any issues arising from the inspection.

The lessee may then be given permission to offer the property for sale subject to the standard conditions and any other specific conditions.

### 7.9.2. APPROVAL TO TRANSFER

Once the lessee has negotiated a sale, the proposed purchaser must provide the Board with a written submission detailing:

- the names of the proposed purchasers including citizenship;
- if a company is to be the purchaser details of the shareholders their citizenship and percentage of shares and voting rights applicable to those shares; and
- undertakings in relation to the standard conditions of transfer and any additional conditions that apply (refer to Appendix E - Table E for standard conditions).

Subject to satisfactory compliance with the above, Ministerial approval to transfer may be given by the Executive Officer under delegated authority. The purchaser will then be advised that an executed and stamped (stamp duty assessed and paid) Transfer of Land document may be presented for Ministerial consent thereon and then be lodged for registration by the Registrar of Titles. Ministerial consent may be granted by the Executive Officer under delegated authority. It should be noted that the Minister's consent may not be endorsed unless the rent has been paid up to date.

### 7.9.3. RESTRICTION ON TRANSFER OF SHARES IN COMPANIES

Many pastoral leases are held by companies. From time to time, transfers of shareholdings are proposed. These are treated in the same manner as a sale of an interest in a pastoral lease. In some cases, only some of the shares are to be transferred and in other cases all the shares of the company are to be transferred.

If a share, or shares, in a company are to be transferred to remaining shareholders, the Board will not require an inspection, nor will any conditions of sale be imposed. If, however, a new party or parties are to become shareholders, then the normal process for sale and transfer of a pastoral lease is followed as described in [Paragraphs 7.9.1 and 7.9.2](#). The only difference being that, instead of the transfer being by Transfer of Land, it will be by a Transfer of Shares. The instrument of share transfer must still, however, be endorsed with Ministerial consent prior to lodging with the Australian Securities and Investments Commission.

An exception to this is where the principal activity, or one of the principal activities, of the company, that is the pastoral lessee, does not include the working of a pastoral lease, for example, a mining company. In such cases, Ministerial consent is not required for a transfer of shares.

#### 7.9.4. MAXIMUM AREA

The Minister, in accordance with section 136(1) of the LAA, may not approve the grant of a pastoral lease, or the transfer of any interest in a pastoral lease, to a person if the result would be that the person's beneficial interest would exceed 500,000 hectares of pastoral leasehold.

The Minister, however, does have the discretion to allow an interest to exceed 500,000 hectares if the grant or transfer would not result in so great a concentration of control of pastoral land as to be against the public interest.

For the purposes of calculating the interest the following applies:

- If a person is the sole lessee of a pastoral lease the entire area under lease is imputed to that person: section 136(2)(a) of the LAA;
- If two or more persons are joint tenants of a pastoral lease the entire area under lease is imputed to each of them: section 136(2)(b) of the LAA,

For example: Pastoral Lease 3114/1500 – area 366, 432 hectares

Lessees – Joe Smith, Rita Wilson and Fred Jones as joint tenants

All three lessees hold a beneficial interest of 366,432 hectares each

- If two or more persons are tenants in common of a pastoral lease the area under lease is imputed to each person in direct proportion to their shares in the lease: section 136(2)(c) of the LAA,

For example: Pastoral Lease 3114/1500 – area 366,432 hectares

Lessees – Joe Smith 2/5, Rita Wilson 2/5 and Fred Jones 1/5

Beneficial interest - Joe Smith 146,572.8 hectares

- Rita Wilson 146,572.8 hectares

- Fred Jones 73,286.4 hectares

- If the pastoral lessee is a company or companies the area of land imputed to them is calculated in the same manner as detailed as above. The area of land is also imputed to the shareholders in proportion to the voting rights represented by their shareholdings in the same manner as tenants in common are calculated: sections 136(2)(d) and 136(3) of the LAA.

If a transfer is proposed which if approved would place a person or company in excess of the 500,000-hectare limit then the Pastoral Lands Board will consider the circumstances and provide the Minister with a recommendation as to whether or not it considers the acquisition to be against the public interest.

#### **7.9.5. FOREIGN OWNERSHIP**

The current Government policy with respect to foreign ownership requires at least 50% Australian equity to be maintained during the term of the lease. This is not a statutory requirement, but has been Government policy since 1979 and has been supported by successive Governments since that time.

If, however, it can be shown that no Australian interest could be obtained, then the Minister may seek Cabinet approval to allow a greater than 50% foreign ownership. The vendor would need to provide evidence that genuine endeavours have been made to obtain the required Australian equity by production of material to indicate that there had been adequate (Australia-wide) publicity to the proposed sale either by auction, inviting tenders or by private treaty.

If a sale of a pastoral lease is to an interest that will be greater than 50% foreign owned, it is to be considered the purchaser/s would need to respond to the standard conditions of transfer, any additional conditions and provide the evidence mentioned above. The Pastoral Lands Board would then consider the application and provide advice to the Minister.

## 7.10. MORTGAGES OVER PASTORAL LEASES

Under section 134(1)(b) of the LAA, a mortgage or charge over a pastoral lease cannot be created without prior Ministerial approval in writing. Prior Ministerial approval in writing is also required to a sub-lease, licence or profit à prendre of a pastoral lease: section 134(1) of the LAA.

The Minister may approve a mortgage or charge over a pastoral lease. A mortgage or charge will be registered on the Crown land title for the pastoral lease.

Ministerial consent can be granted under sections 18 and 134 of the LAA under delegated authority by the Executive Officer, Pastoral Land Business Unit. An executed and stamped document must be presented for consideration by the Executive Officer. The Executive Officer will check all land description and lessee details and confirm that the rent is paid up to date. If the document is in order then he will endorse Ministerial consent. The client may then lodge the document for registration by the Registrar of Titles.

## **7.11. SUBDIVISION OF A PASTORAL LEASE**

### **7.11.1. BACKGROUND**

There may be circumstances when a pastoral lessee may wish to subdivide a pastoral lease. This may be to retain one part and sell the other, or sell both parts following subdivision. Examples could be when there is a dissolution of a family partnership, where the lease is too large to be managed effectively, or where there are physical attributes that make effective management difficult.

The Minister may not approve the subdivision of a pastoral lease unless the Pastoral Lands Board is satisfied that, when fully developed, each part is capable of carrying sufficient authorised stock to enable it to be worked as an economically viable and ecologically sustainable pastoral business unit.

If a part of the subdivision is not considered to be economically viable, a subdivision will not be approved unless the non-viable part is amalgamated with an adjoining pastoral lease or becomes part of a pastoral business unit with an adjoining pastoral lease.

A subdivision may only occur as part of a sale or transfer process.

### 7.11.2. PROCESS

In the first instance a lessee must apply to the Board for consideration to a proposed subdivision and provide:

- a plan showing the proposed subdivision;
- details of the land systems within each part of the proposed subdivision;
- details of the expected carrying capacities for each part of the proposed subdivision;
- budget scenarios for each part of the proposed subdivision: and
- proposed names for the subdivided parts if they are to be stand alone stations.

Pastoral Land Business Unit will then refer the proposal to the Department of Agriculture and Food WA and seek advice as to the viability of all parts of the proposed subdivision. Geographic Names Committee approval will be sought for the proposed new station names.

Upon receipt of advice from the Department of Agriculture and Food WA the Board will consider the proposal and make a recommendation to the Minister for Lands. Approval may be granted on behalf of the Minister under delegated authority.

If approval is granted by the Minister then Pastoral Land Business Unit will advise the lessee of such including details of the conditions of sale to apply. However, no further action would be taken until such time as the lessee advised that it has signed a Contract of Sale. The proposed purchaser would need to comply with the requirements as set out in [Paragraph 7.9.2.](#)

If a transfer is approved, LANDGATE Deposited Plan/s will be drawn to define the subdivided parts. Documents will then be prepared to create Crown land titles for all parcels of land involved. The plans can be drawn “in house” within the priorities of the relevant branch or, if the lessee expresses urgency, the work may be outsourced at the lessee’s cost. The lessee will then be provided with land description details and be requested to arrange the preparation, execution and stamp duty assessment of Transfer of Land document/s and any other necessary documents such as Discharge of Mortgages, Withdrawal of Caveats. The Transfer document/s will need to be submitted to the Executive Officer of Pastoral Land Business Unit for endorsement of Ministerial consent under delegated authority. The documents may then be lodged together with the duplicate Crown Lease for registration by the Registrar of Titles.

The original pastoral lease will subsist until its current expiry date of 30 June 2015, however the new lessees will be registered on the respective Crown land titles, which will be issued for the respective land parcels.

Upon completion of registration, the Oracle Property Management System (ORACLE) will be updated.

## **7.12. AMALGAMATION OF PASTORAL LEASES**

A key focus of the Pastoral Lands Board is the economic viability of pastoral leases and it prefers that non-viable leases are not perpetuated. A strategy in dealing with this issue is the amalgamation of adjoining leases particularly if they are unviable. Amalgamation of Pastoral Leases may occur under section 142 of the LAA. The Pastoral Lands Board encourages the amalgamation of adjoining leases when they are held by the same persons and one or both is considered unviable.

### **7.12.1. AMALGAMATION OF ENTIRE LEASES**

If two or more pastoral leases are held by the same lessee/s, with the same proportion of shares and the leases have the same conditions other than the term of the lease, the Minister may by order provide that the leases be amalgamated: section 142(1) of the LAA. Although the LAA does not specify that the leases must be adjoining it is generally practice to amalgamate two or more leases if they are adjoining and can be effectively run as one.

If the lessee/s of pastoral leases are eligible for amalgamation, on request and on payment of the prescribed fee, the Pastoral Lands Board may recommend to the Minister that amalgamation proceed. The Board is required to consider a request for amalgamation and must not unreasonably refuse to recommend amalgamation: section 142(2) of the LAA. The lessee/s should nominate the station name that is to be used for the amalgamated leases. To achieve the amalgamation, Crown land titles will be created for all parcels of land involved. A Lease of Crown Land and Amalgamation Order (leasehold) (see approved Form LAA-1002) will be prepared and lodged for registration by the Registrar of Titles. The Amalgamation Order must specify a name for the amalgamated lease. The new pastoral lease rent will be the combined rent of the amalgamated leases.

On amalgamation, the term of the new lease must not be longer than the period of the shorter term of the leases being amalgamated.

### 7.12.2. AMALGAMATION OF PART LEASES

For various reasons a pastoral lessee may wish to transfer a portion of the lease to an adjoining lease. In most cases this will be due to geographical features which preclude the use or render the portion impractical to use by the lessee of the lease in which the land is situated.

In the first instance, a lessee must apply, in writing, to the Board providing a plan of the area proposed for transfer and amalgamation into the adjoining lease. The plan should provide as much information as possible including angles, dimensions and GPS coordinates. The lessee to whom the land is to be transferred must also write to the Board and confirm his agreement to the proposed amalgamation. The request will be referred to the Department of Agriculture to assess the impact of the proposal in terms of viability on the lease from which the land is to be excluded. If the Board is satisfied that there will be no adverse effects on the station it will normally approve the proposal and recommend the proposed part amalgamation to the Minister for Lands.

Following approval by the Board, and if the Minister approves the proposed amalgamation then consideration will be given to whether survey is required or whether the information supplied is sufficient to enable a Deposited Plan/s to be drawn to support the issue of Crown land title/s. This will be assessed in consultation with the Land Boundary Services/ Statutory Services Group in LANDGATE. If there is to be a shared boundary well or bore it is likely that survey will be required and the lessees involved will need to confirm on which side of the boundary the well or bore will be located.

If it is determined that survey is required, the proposal will be forwarded to the Manager, Survey Coordination, RDL, to enable an estimate of costs to be obtained. The lessee will then be advised of the requirements and advice sought as to whether he wishes to proceed. The lessee will also be given the option of appointing a Surveyor of his choice who is accredited by LANDGATE; however, the instructions to proceed must be given by the Survey Coordinator. If survey is required and the lessee/s agrees to meet the costs instructions to proceed will be issued.

Once Deposited Plan/s have been drawn, the lessee/s will then be provided with land description details and be requested to arrange preparation, execution and stamp duty assessment of a Transfer of Land document and any other necessary documents such as Discharge of Mortgages, Withdrawal of Caveats. The Transfer document may then be submitted to the Executive Officer of Pastoral Land Business Unit for endorsement of Ministerial consent under delegated authority. Ministerial consent cannot be given if the rent has not been paid up to date. Pastoral Land Business Unit staff will then prepare Applications for CLT/s (if not already issued) and a Lease of Crown Land and Amalgamation Order (Leasehold).

The lessee or his agent may lodge the Transfer independently and Pastoral Land Business Unit staff will lodge the Lease of Crown Land and Amalgamation Order (Leasehold) together with any Applications for CLT/s for registration by the Registrar of Titles. Alternatively both parties may lodge the documents at the same time.

On amalgamation, the term of the new lease must not be longer than the period of the shorter term of the leases being amalgamated.

Upon completion of registration, the Oracle Property Management System (ORACLE) is updated.

### 7.13. ADJUSTMENT OF BOUNDARIES

Boundaries between 2 pastoral leases may be adjusted by the Minister, on recommendation of the Pastoral Lands Board, if an application is made by the 2 lessees and on payment of a prescribed fee, if any: section 141 of the LAA. At this stage the only fee payable would be a document preparation fee.

Circumstances for using this provision would be when:

a boundary does not follow a fence line and the lessees wish to adjust the legal boundary to confirm with the on ground accepted boundary; or

as the result of a cadastral survey it is found that the surveyed boundary does not conform with the current legal boundary.

An application to adjust the boundaries would need to be made, in writing, by the affected lessees. Where it is proposed to amend a boundary to conform with an existing fenceline, the application must be accompanied by a plan showing the current legal boundary, the fencelines and coordinates and dimensions of the proposed boundaries. An assessment will be made as to whether there will be any change to the stock carrying capacity for the leases. Consultation with the Department of Agriculture may be required if the areas of the lease are to be significant. The Board would consider the proposal and then make a recommendation to the Minister.

If the Minister approves the proposed amendment, an assessment will then be made in consultation with the Land Boundary Services/ Statutory Services Group in LANDGATE as to whether a survey is required or whether information supplied is sufficient to enable a Deposited Plan to be drawn. If it is determined that survey is required, the proposal will be forwarded to the Manager, Survey Coordination, RDL, to enable an estimate of costs to be obtained. The lessee/s will then be advised of the requirements and advice sought as to whether it wishes to proceed. The lessee/s will also be given the option of appointing a Surveyor of its choice who is accredited by LANDGATE; however, the instructions to proceed must be given by the Survey Coordinator. If survey is required and the lessee/s agrees to meet the costs, instructions to proceed will be issued. If it is determined that survey is not required, the Statutory Services Group will prepare the necessary Deposited Plan/s.

The adjustment of boundaries is made by way of Ministerial Order so once Deposited Plans have been drawn a Pastoral Lease Boundary Amendment Order would be prepared and forwarded for the Ministers signature. For a copy of the approved form to be used, see Form LAA-1034. (*Please note forms are prepared and lodged by RDL staff only.*) Applications for Crown Titles will also be prepared if not already issued. When the document has been returned from the Minister's Office it will be lodged for registration by the Registrar of Titles.

Upon completion of registration, ORACLE will be updated to reflect the area amendments and adjustments to rents. The rent will be adjusted in proportion to any change to the stock carrying capacity: section 141(3) of the LAA.

## 7.14. PASTORAL BUSINESS UNITS

The Minister may approve under section 142A of the LAA the creation of a pastoral business unit comprising two or more pastoral leases or part leases if:

- a new lease is granted or part of a lease is transferred (which is not by itself a viable unit) and an adjoining lease is held by the same lessees, and
- the lessees hold the same proportionate share of each lease or part of lease.

Refer to [Paragraphs 7.11.1 and 7.11.2](#).

The reason for this option, rather than amalgamating with the adjoining lease, is that the Commonwealth *Native Title Act 1993* prevents grants of greater tenures (including lease terms) than currently exist unless the “future acts” procedures under that act are complied with, which may take years.

Native Title issues need to be addressed when parts of a greater term lease are to be included into an existing pastoral lease for a lesser term. The term of a lease is determined by its start date to its current finish date of 30 June 2015. For example, a part of a lease that commenced on the 1 January 1962 could not be amalgamated into a lease that started 1 January 1970, without reducing the lease term of the 1962 portion

To create a pastoral business unit, the Pastoral Lands Board will make a recommendation to the Minister in the first instance. Once approved by the Minister for Lands, Crown land titles for all land parcels will need to be issued. Memorials, in the approved form, will need to be created and lodged for registration for each lease, or part of a lease, that is to comprise the pastoral business unit. Memorials are to reflect which provisions of Part 7 of the LAA and that the current lease conditions will apply to the pastoral business unit. The pastoral business unit is given a name (usually the pastoral station name). The Minister may vary or withdraw a pastoral business unit at any time. Once memorials have been registered ORACLE will be updated.

See Memorials (Approved Form LAA-1070) and Withdrawal of Memorials (Approved Form LAA-1071). *Please note forms are prepared and lodged by RDL staff only.*

The various pastoral leases (or parts of leases) comprising the pastoral business unit are to be treated as one pastoral lease, for the purposes of:

- approval of any transfer, mortgage or charge of the pastoral lease;
- the maximum area of the pastoral lease;
- any other applicable provisions of the LAA listed in the memorial.

## 7.15. RENEWAL OF PASTORAL LEASES

All current pastoral leases issued under the now repealed *Land Act 1933* have a common expiry date of 30 June 2015. These leases, however, all commenced on varying dates and lease terms vary from approximately 21 to 49 years.

### 7.15.1. RENEWAL OF PASTORAL LEASES ISSUED UNDER THE *LAND ACT 1933*

In 1995, under provisions in the former *Land Act 1933*, pastoral lessees could apply to the Minister and seek advice as to the future of their leases upon expiry on 30 June 2015. The Minister was obliged, under that Act, to respond by 31 December 1997. Most pastoral lessees were given an offer of renewal subject to the following conditions:

- Compliance with lease conditions, including stocking requirements and maintenance of infrastructure, at the time of expiry on 30 June 2015;
- there being no Soil Conservation Notices or other orders by the Soil and Land Conservation Commissioner in force;
- there being no unfulfilled requirements of the Soil and Land Conservation Commissioner and/or the Pastoral Lands Board in relation to observance of lease conditions under the *Soil and Land Conservation Act* and the LAA;
- exclusion of areas from the existing lease that may be required for a public purpose; and
- the existing annual lease rental for the lease as at 30 June 2015 will apply to the renewed lease, subject to any reduction in the rent payable under the lease as a result of an exclusion of land for a public purpose. The rental review period for the renewed lease will continue to apply every five years in accordance with section 123(4) of the LAA.

The next rent review for the renewed lease will be on 1 July 2019.

The new lease term is to be the same term as the current lease.

There were amendments to the LAA in December 2000 which affected condition (4) listed above. The Minister's may exclude land from a renewed lease by notice to the lessee, which must be given within 2 years of the amendments coming into effect (that is, 2 years from 7 December 2000).

If the lessee is given a notice to exclude land, the lessee may:

- accept the conditions in the notice;
- withdraw from the new lease; or
- enter into negotiations on the area to be excluded.

If agreement cannot be reached within 2 years of the notice being given, the lessee will be regarded as having withdrawn from the agreement to renew the lease: section 143(6g) of the LAA.

The exclusion of any land will only take effect from the commencement of the renewed lease (that is 1 July 2015).

If no notice is given to the lessee within the 2 years, then no land can be excluded from the renewed lease under these provisions: section 143(6i) of the LAA.

### 7.15.2. RENEWAL OF PASTORAL LEASES ISSUED UNDER THE *LAND ADMINISTRATION ACT 1997*

A pastoral lessee of a pastoral lease issued under the LAA may, in accordance with the provisions of section 140 of the LAA, at any time during the period of 12 months before the date 10 years before the expiry of its lease, apply in writing to the Minister requesting an offer of a renewal of the lease.

The Minister in turn, must no later than 8 years before the expiry of the pastoral lease determine that:

- the lessee is not to be offered a renewal or grant, and notify the lessee accordingly;
- determine that the lessee is to be offered a renewal of the lease, on specified conditions, and make an offer to the lessee accordingly; or
- determine that the lessee is to be offered the grant of a lease over part only of the land under the present lease, on specified conditions, and make an offer to the lessee accordingly.

If an offer of renewal is made by the Minister, the lessee or the successor in title to the lessee, may accept an offer at any time within one year after the date that the offer is made. A renewal or grant offered would commence immediately upon the expiration of the existing pastoral lease.

Prior to making a decision the Minister is to seek and receive written advice from the Pastoral Lands Board as to whether the lessee should be offered a renewal of the lease or grant of a lease over only part of the land currently under lease.

### 7.15.3. COMPENSATION FOR IMPROVEMENTS ON EXPIRY OF PASTORAL LEASES

In accordance with section 114(1) of the LAA, a “**continuing lease**” is a pastoral lease which was granted prior to the LAA or has been renewed under section 140 of the LAA or section 98 (11) of the repealed *Land Act 1933*.

If a continuing lease expires and is not further continued the lessee is entitled to receive compensation for any lawful pastoral improvements remaining on the lease. The amount of compensation will be the market value of the improvements on the date of expiry as determined by the Valuer-General: section 114(2) of the LAA.

If at the time of renewal only part of the lease is renewed, the compensation at market value is only payable for any lawful pastoral improvements remaining on the portion not to be renewed: section 114(4) of the LAA.

If a pastoral lease other than a continuing lease expires, that is, a lease issued under the LAA, then no compensation is payable for improvements remaining at the expiry of the lease.

## 7.16. SHARED WATERS ON PASTORAL LEASES

There are many pastoral leases throughout the State where watering points are located on or near the common boundary of the leases and are shared by the adjoining lessees. This is usually undertaken by way of a “gentlemen’s agreement” but can lead to difficulties in securing the right to share the facility. Generally the best way to protect a right of this type is by the grant of an easement.

An easement is a legal document which sets out the rights that an owner of land can exercise over another person’s land, including responsibility for repairs and maintenance of the facility. The other owner of land is legally prevented from doing anything that would interfere with the enjoyment or exercise of those rights.

An easement:

is a right granted in relation to land that is registered on the certificates of Crown land title relating to both pastoral leases;

can be enforced in a Court by both parties to it;

runs with the pastoral leases, so that whenever either lease is transferred to a new pastoral lessee the easement will still be valid.

### 7.16.1. CREATION OF AN EASEMENT

There are two ways an easement can be created over a pastoral lease. However, in either case, it cannot be created without the agreement of both pastoral lessees, and all persons having a registered interest in both pastoral leases. This would include, for example, a mortgagee and a sublessee.

#### OPTION 1:

The Minister as the owner of Crown land, through RDL, has the authority to grant an easement over portion of a pastoral lease (with the lessees consent) in favour of an adjoining pastoral lease and all future lessees of the adjoining pastoral lease. This easement will be effective until the adjoining pastoral lease expires, is surrendered or is otherwise terminated.

#### OPTION 2:

A pastoral lessee (with the Ministers consent) could grant an easement over a portion of the lease in favour of the adjoining pastoral lessee and all future lessees of the adjoining pastoral lease. This easement will be effective until the first of either pastoral lease expires, is surrendered or otherwise terminated.

In either case a Crown land title for the pastoral lease over which the easement is to be registered will need to be created. The pastoral lessees will need to have an easement document prepared by a solicitor. A plan that shows the easement area in sufficient detail would also need to be prepared by a surveyor. The difficulty, in some cases, will be identifying precisely where the facility is located in relation to the pastoral boundaries if they are not surveyed, so that the easement can be prepared to correctly reflect the location of shared watering points.

The lessees or their solicitor must submit the easement document to the Executive Officer, Pastoral Land Business Unit who, if appropriate, may endorse Ministerial consent under section 18 of the LAA by delegated authority. Once Ministerial approval has been granted the client may lodge the easement document for registration by the Registrar of Titles.

Whether an easement is registered, or there is some more informal agreement or arrangement in place, the rights will be enforced under them in the same way. It is up to the party that is not in breach to enforce its rights against the other party, in a Court.

It is a matter for the parties to the easement to resolve. The Pastoral Lands Board would not have any power to intervene if a pastoral lessee breaches the terms of an easement (or any other agreement or arrangement).

## 7.17. DIVIDING FENCES

There is no requirement under the terms of a pastoral lease to construct a boundary fence. A boundary fence may, however, be required in order for a pastoralist to effectively control his stock and manage the lease to its best advantage as required under section 108 of the LAA.

The *Dividing Fences Act 1961*, administered by the Department of Local Government and Regional Development, does apply to pastoral leases (where there is more than five years of the term left to run). That Act provides the statutory basis for dealing with boundary fences and the rights and responsibilities of neighbours in cost sharing for construction and maintenance.

Available on the Department of Local Government website [www.dlgrd.wa.gov.au](http://www.dlgrd.wa.gov.au) are two publications in regard to dividing fences that are useful reference documents for landholders requiring assistance on this issue. These publications are “Dividing Fences – Rights and Responsibilities” and “Dividing Fences Act 1961 – Court Action Kit”.

## 7.18. PUBLIC ACCESS ON PASTORAL LEASES

Access to pastoral leases by third parties including tour operators, fishermen and tourists is an increasing issue involving lessees and the Board. The community at large has expectations regarding the access to remote areas of interest, whether it be for fishing or passage through the land. Situations have also arisen where tour operators have been denied access to pastoral land after years of operation or have been asked to pay excessive fees to continue operations.

In general, multiple use of pastoral lands is supported, provided that the activities of the public do not adversely affect the pastoral operations or cause environmental damage to the land. A major problem is that the public generally does not have an understanding of the rights and responsibilities of pastoral lessees. Unfortunately, the actions of the minority through things such as leaving gates open, damaging property, killing stock and leaving rubbish, have in some cases resulted in access to the pastoral land being rescinded to the public after many years of open access. This can lead to ill feeling against pastoralists who are trying to protect their livelihood.

A number of principles and factors are considered to apply to the issue of public access over a pastoral lease. These include but are not limited by the following:

- A pastoral lessee has a right of quiet enjoyment of the pastoral lease land.
- A person (not acting under the authority of an Act – for example, *CALM Act* or *Mining Act*) entering on to pastoral lease land without the pastoral lessee's authority or permission is a trespasser. Trespassers may be prosecuted under section 82B of the *Police Act*.
- A pastoral lessee has obligations under a pastoral lease to maintain roads and improvements etc on the pastoral lease.
- A pastoral lessee may give others permission to enter on to pastoral lease land provided that the pastoral lessee is predominantly using the land for pastoral purposes.
- If permission to enter is granted to the public, for example passing tourists, any fee charged is to be no more than that required to cover costs involved in permitting access. Fees charged may be based upon apportionment of time involved in dealing with tour operators, tourists, maintenance costs of roads, liability insurance, property damage, stock loss or other relevant costs.
- Potential lessees may be potentially liable to persons entering pastoral leases, particularly when fees are charged for access
- If fees charged are large enough to constitute a primary or secondary income then it is considered that rather than a cost recovery exercise, the pastoral land is being used for other than pastoral purposes.
- A permit under the LAA must be applied for when the pastoral lessee is intending to use the land for non-pastoral activities including station stay or tourism purposes.
- Section 106 of the LAA creates an offence for using land under a pastoral lease for purposes other than pastoral, unless a permit has been issued by the Board.
- Pastoral Leases may be subject to public access routes made by agreement between the Minister for Lands and the Lessee. See [Chapter 5](#) of this manual.

