

Pastoral Industry Working Group Executive Summaries

July 2003

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PREAMBLE

Following the Gascoyne Muster in May 2002 the Hon Alannah MacTiernan, MLA, Minister for Planning and Infrastructure 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; recreational and tourism interests; conservationists; and local and State government.

The five pastoral industry working groups established were:

- Aboriginal Access and Living Areas;
- Access to Pastoral Land;
- Alternative Models of Land Tenure;
- Pastoral Industry Economic Monitoring Requirements; and
- Pastoralism for Sustainability.

Three of these groups - Aboriginal Access and Living Areas; Access to Pastoral Land; and Pastoralism for Sustainability - prepared interim reports to aid the determination of land for exclusion from the 2015 renewal of pastoral leases.

All five groups submitted final reports to the Minister in September 2003. This document contains extracts of those final reports. The complete version of the final reports is available on the compact disc (CD) attached or on the Department for Planning and Infrastructure website at www.dpi.wa.gov.au . For other formats of these reports please contact:

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A sixth pastoral industry working group was established by the Minister for Local Government and Regional Development to examine pastoral rating issues. A copy of its final report is also included on the CD. Enquires regarding this report should be made directly to the Department of Local Government and Regional Development on phone (08) 9217 1500, fax (08) 9217 1555 or email to info@dlgrd.wa.gov.au.

ABORIGINAL ACCESS AND LIVING AREAS WORKING GROUP

ABORIGINAL ACCESS AND LIVING AREAS WORKING GROUP

EXECUTIVE SUMMARY

Terms of Reference

1. Consider requirements for access to traditional lands under section 104 of the *Land Administration Act 1997* (LAA).
2. Review provisions for indigenous access on to pastoral lands in other States of Australia.
3. Report on means to approach Aboriginal access onto pastoral lands in Western Australia.
4. Consider and develop a policy for Aboriginal living area excisions from pastoral leases.
5. Assess possible exclusions from pastoral leases in 2015 for purposes associated with the needs of Aboriginal communities.
6. Report on ways to improve the understanding and resolution of Native Title issues on pastoral leases.

The Working Group agreed to 25 recommendations addressing its terms of reference, as listed below. An Interim Report on possible exclusions (Term of Reference Five) was submitted to the Hon Minister for Planning and Infrastructure in October 2002.

LAA section 104 (Term of Reference One)

The Working Group considered that section 104 defines an important general right of pastoral lease access to Aboriginal people that recognises their traditional ownership of the land, together with the importance of access for the continued economic operation of their societies. The Working Group agreed that, in relation to providing guaranteed access to pastoral leases within a manageable system, section 104 has been demonstrably inadequate. The provision can be seen as a general right that, to date, has not been subject to legislative or regulatory mechanisms to make it effective in facilitating Aboriginal access to pastoral leases where this might be necessary or desirable.

The Working Group was of the unanimous view that the intent of section 104 should be explicit, that there is a need for the provision to be modernised and regulated, and procedures provided to improve its effectiveness. This represented an important compromise between pastoral and Aboriginal members of the Working Group.

Pastoral members agreed to provisions to guarantee Aboriginal access, as long as potential beneficiaries are specified to be those with a traditional and/or historical association to the subject land, and a system is devised to regulate and administer the operation of the provision. The pastoralist would be obliged to enter into a land access agreement with the traditional/historical owner group and in the event that such an agreement could not be reached (specifically after the assistance of mediation) a land access regime would be arbitrated between the parties. Aboriginal people without such a connection would not be able to benefit from the special access rights envisaged by section 104, but would be subject to provisions for general public access to pastoral leases. These are the subject of consideration by the Access to Pastoral Land Working Group under the chairmanship of the Hon. Jon Ford MLC.

Recommendations

1. The Government establish a regime to transform section 104 of the Land Administration Act 1997 into an effective instrument.
2. Access under section 104 to be limited to those Aboriginal people with a traditional and/or historical association to the subject land.
3. Pastoral leases to include conditions requiring access agreements to be reached between parties.
4. Regulations to the LAA 1997 be developed based upon the principles outlined in section 2.3b of this report.
5. Agreements reached pursuant to the operation of section 104 be maintained on a register held by the Department of Land Information (DLI) and, once registered, be included as conditions of any pastoral lease in order to bind future lessees. If an access agreement has not been reached in relation to a pastoral lease, general lease conditions should state that the lease is subject to section 104 of the LAA.

Access provisions in other States of Australia (Term of Reference Two)

The Working Group considered provisions in the Northern Territory and South Australia, both of which operate under pastoral lands statutes that contain an access reservation in favour of Aboriginal people.

Recommendations

6. The Minister to note the pastoral access regimes that exist in the other States.
7. The Minister to note that the approach recommended by this Working Group is consistent with that utilised by some other States.
8. To facilitate this process, it is also proposed to develop guidelines for developing Indigenous access and use agreements on pastoral lease land, unallocated Crown land (UCL) and CALM lands.

Pastoral access agreements (Term of Reference Three)

The Working Group recommends a system for developing, managing and registering agreements on the basis that they should be binding on the parties, and assignable on future transfer of the lease. It does not discourage the use of informal access agreements between parties, which may subsequently become formalised as registered agreements attached to the lease. There are many examples of informal or 'handshake' agreements that are firmly based on existing relationships between the parties, some of them going back generations. Good and functional relationships between the parties will always go a long way towards facilitating an agreement, particularly when the agreement provisions are based on existing practice.

Recommendations

9. Core conditions be developed for inclusion in all pastoral access agreements. These could be based on the principles developed in relation to the proposed Goldfields regional pastoral access protocols.
10. Agreements to include operational regulations that reflect the rights, circumstances and aspirations of the parties, as they relate to their specific circumstances.
11. Agreements to include provisions relating to the joint responsibilities of the parties in relation to conservation of natural resources and other land uses.
12. Agreements to include codes of conduct binding on both parties.
13. That State Government indemnifies both parties for the purposes of public liability or consider expanding or adopting the provisions of s66 of the LAA 1997 for Aboriginal access.
14. Agreements to include dispute resolution and mediation procedures.
15. Any place of heritage significance on a pastoral lease to be subject to access agreements at the request of either a relevant Aboriginal, or pastoral party.

Aboriginal Living Areas and Land Needs (Term of Reference Four)

The Working Group acknowledged that there is an almost infinite diversity of needs for land amongst Aboriginal populations around WA, but these needs are complex, and require different responses from the Government and pastoral industry. There may be a range of motivations for Aboriginal people seeking rights to land, and the Working Group considered that a desire to use land to establish non-permanent camps or to access land for traditional or recreational purposes on traditional country are equally valid reasons for seeking land as the desire to establish permanent communities. The previous Aboriginal Living Area Program did not accommodate the diversity of Aboriginal needs that existed then and that still exist.

The Working Group also acknowledged pastoralists' rights to occupy and use pastoral lease land. Pastoralists require safeguards to protect their capacity to run an effective and profitable pastoral enterprise without unnecessary interference and without threat to their private enjoyment of the land, and need certainty in their rights to use the land to this end. This requires rights to direct how areas of land may be accessed and used. At the same time, pastoral representatives noted that there was always room for negotiation, and that some pastoral leases include areas that are rarely used for pastoral purposes, or may be surplus to land requirements. These are areas that could be amenable to negotiations over tenure and land use.

In summary, the Working Group concluded that:

- Aboriginal people aspire to access pastoral leases for a diverse range of land uses other than community housing. Hence the term 'living area' needs to be redefined and extended to capture these other uses;
- New concepts and definitions are required that entail an effective response to Aboriginal land needs;
- New Aboriginal land programs should be based on principles of mutual respect for the rights, interests and aspirations of the main stakeholders, notably pastoral lessees and Aboriginal applicants for land title.
- There are substantial impediments to excision of living areas from pastoral leases – including limited available resources to make these areas economically sustainable. There is a need, if these areas are to proceed, for the resource base to be defined – such as through business or management plans – to ensure sustainability;
- There exist statutory processes under the Land Administration Act 1997 and the Native Title Act 1993 to provide for ongoing excisions from pastoral leases;
- Under an enhanced section 104 regime (and from the opportunities available through the services of the Indigenous Land Corporation) the excision process is not as central to gaining access as it once was.

Recommendations

16. The previous 'Aboriginal Living Area Program' has limited potential in the current legal and administrative environment and should not be reinstated, given the recommendations regarding section 104 outlined above.
17. The Government progress the land ownership and land management aspirations of Aboriginal people through management agreements and grants of interest over other Crown lands (UCL, National Parks), in addition to pastoral leasehold, in a way that will effectively respond to their social, cultural, economic and environmental needs.
18. The Working Group notes that should the actions envisaged in Recommendation 17 have an adverse impact on the viability of some pastoral leases, the matter of compensation will need to be considered.
19. Government acknowledges that Aboriginal people have different motivations for seeking rights to land, and advocates the need for the Government programs to recognise the diverse requirements of Aboriginal people for land title.
20. Two broad categories of Aboriginal land needs to be recognised, and appropriate Government responses developed to reflect these needs:
 - a) Community housing area, that may require tenure adjustments, and be subject to associated health and planning processes and regulations;
 - b) Indigenous land use area, incorporating diverse land uses, may not require an excision to allow other activities, and may in substance be a pastoral access agreement negotiated pursuant to section 104 of the LAA.

21. The Working Group recommends that the key Commonwealth and State Government stakeholders, including DOLA, RATSIBs, ATSIC, the Aboriginal Housing and Infrastructure Council, the ILC and DIA develop a partnership approach to developing new land programs, and to resolving previous difficulties, particularly in relation to the recurrent funding of community living areas.
22. The Working Group recommends that issues of economic, social and environmental sustainability be central in the assessment of applications for community housing areas, and that these should be considered on a case by case basis, and take account of the needs and requirements of all key stakeholders.
23. A process of research, data collection and consultation should be undertaken to determine:
 - a) the current status and key issues of established community areas;
 - b) the need for formal access arrangements for established communities; and
 - c) the status of unprocessed applications for living areas, including current Aboriginal community needs and aspirations.
24. The Minister consider legislative and/or administrative options for the grant of land for Aboriginal community housing and the recognition of Aboriginal aspirations to use land for diverse purposes, and examines in detail relevant provisions in other Australian jurisdictions to assess their potential in WA.

Public education on native title (Term of Reference Six)

The Working group noted the importance of information on native title issues being readily available to the stakeholders, notably pastoral and Aboriginal interests, in order that native title may properly be regarded as part of the ongoing land management landscape. Community education on native title can be an effective method of increasing knowledge on what is possible to achieve by the parties establishing a direct relationship and negotiating agreements on how their respective rights may co-exist or be exercised co-operatively.

Recommendation

25. That the key stakeholder representative organisations (Pastoralists and Graziers Association, WA Farmers Federation, WA Aboriginal Native Title Working Group, DOLA, Premier and Cabinet Office of Native Title and the Pastoral Lands Board), develop and implement a public education strategy on native title issues as they relate to pastoral lands access, drawing upon materials developed by the National Native Title Tribunal, where appropriate to Western Australian circumstances.

**ACCESS TO PASTORAL LANDS
PASTORAL INDUSTRY WORKING
GROUP**

ACCESS TO PASTORAL LANDS PASTORAL INDUSTRY WORKING GROUP

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 LAA 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 LAA 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.
- 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.

ALTERNATIVE MODELS OF LAND TENURE WORKING GROUP

ALTERNATIVE MODELS OF LAND TENURE WORKING GROUP

EXECUTIVE SUMMARY

Pastoral uses have been, and are, likely to remain the predominant commercial activity, in terms of area covered in the rangelands, in the foreseeable future.

For these pastoral businesses, the existing pastoral lease framework contains a number of limitations, which constrain their economic viability and therefore the sustainability of the rangeland resource.

In addition, other land uses in the rangelands are emerging and for these other uses the existing pastoral lease framework is clearly not appropriate because the land is not intended to be used for “pastoral purposes”.

In other words, to date the form of land tenure available (pastoral lease) has determined the use of the rangelands (pastoral purposes), which is not appropriate.

Various national reports on the rangelands in recent years have recommended a review of State legislation to allow diversification of the use of the rangelands.

To provide real opportunities to the pastoralists and others wishing to use the rangelands, the intended use of the land (if acceptable) should determine what is the most appropriate form of tenure for that use.

The Working Group on Alternative Models of Land Tenure developed a number of Guiding Principles as the base from which it considered these tenure issues (see Section 5). However, the principle which overarched all of its considerations is the need to ensure the ecologically sustainable development (ESD) of the rangelands. This is the overriding public interest factor.

The Guiding Principles cover:

- (i) the “triple bottom line” economic, environmental and social factors; and
- (ii) a fourth factor, of administrative issues and mechanisms.

The challenge for Government is to provide greater security of tenure for existing pastoralists and new forms of tenure for other uses of the rangelands, while achieving sustainability of the natural resource-base of the rangelands.

Terms of Reference 1 – Investigate alternative models of pastoral land tenure, with particular focus on financial institutions’ requirements and the public interest

Any proposal for an alternative form of tenure should be offered on the basis that existing pastoral lessees are given a choice. It is for each pastoral lessee to choose:

- (i) to remain under their current pastoral lease; or
- (ii) to seek to take advantage of any improved or new form of tenure, which is likely to require the lessee to also participate in the native title process.

Due to the requirements of the *Native Title Act 1983 (Cth)* (NTA) (see item 6.3.1), it is likely that any change or improvement of tenure for existing pastoral lessees will only occur at their individual choice. It will not operate as an automatic conversion of existing pastoral leases.

In any event, the existing pastoral lessees should have the choice as to whether or not they wish to switch to any alternative form of tenure that is made available.

Due to these native title requirements, the Report of the Working Group on Alternative Models of Land Tenure approaches the issue of improving the tenure for pastoral lessees in the pastoral areas of Western Australia in two ways.

1. *Assuming the existing pastoral lessee or other person seeking tenure is prepared to address native title issues, what is the most appropriate form of tenure(s) for pastoral and other uses of the rangelands?*

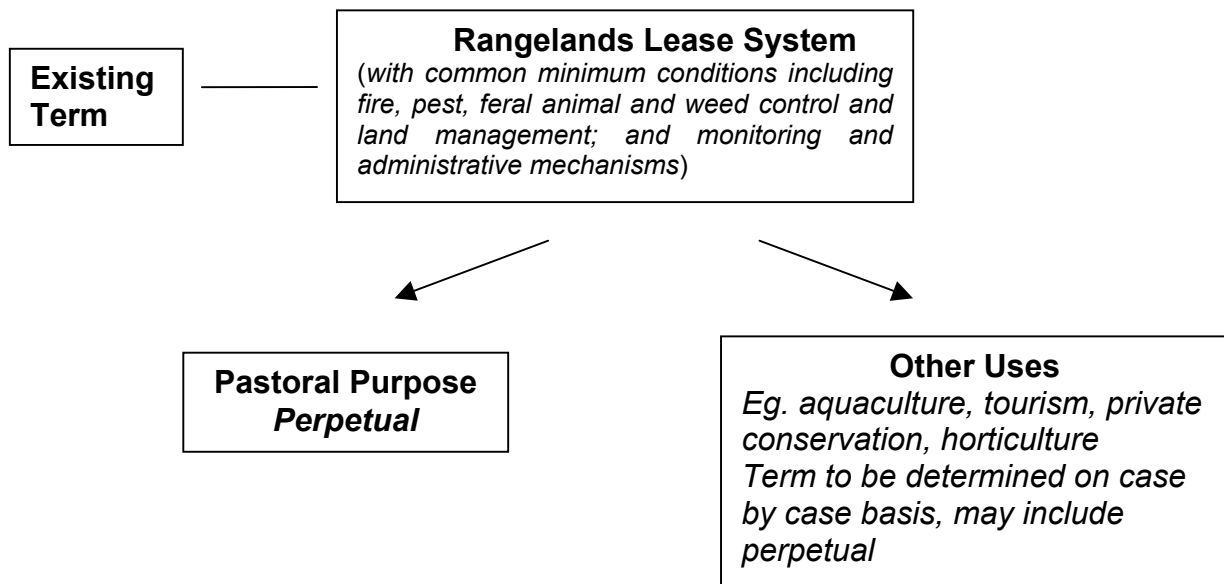
1.1 Rangelands Lease System (item 7.1)

Essentially, the Working Group recommends the development of a “rangelands” lease system that will allow for any appropriate land use (with conditions applicable to the proposed use), but which will contain minimum conditions relating to land management. These minimum conditions will apply to all “rangelands” leases, no matter for what purpose the land is used. One category will be for “pastoral purposes”.

The proposal for a “rangelands” lease system, or any other proposal for a new form of tenure, must have sufficient flexibility to allow for variations to accommodate emerging uses of the land, as they arise.

This new form of land tenure should also be focused on land management and condition outcomes with an emphasis on incentives, rather than being a highly prescriptive system, as is currently the case. This is consistent with the strong policies and developments in other jurisdictions reviewed by the Working Group.

The diagram below shows how the proposal for a rangelands lease would operate.



Some of the pastoral members of the Working Group have some concerns as to how any new form of tenure system is named or styled. They are concerned to ensure that the predominant activity of “*pastoral*” uses or purposes remains recognised in the name of any new tenure for that purpose.

In addition, some of the pastoral members of the Working Group have concerns in relation to the development of an incentives based system. They are concerned that it may have an adverse effect that results in a “punishment by rewards” system.

1.2 Institutional Framework for Rangelands (items 6.2.2, 6.4.4 & 8.4)

In this broader context also, the majority of the Working Group is of the view that there is an urgent need for the Government to develop an overriding institutional framework for managing the rangelands.

This framework is not to be limited to tenure issues, but must relate to all facets of rangelands use and management, covering the ‘triple bottom line’ as well as issues relating to the system of monitoring of the land condition and administration of the lease tenures. It must also be based on the principle of ecologically sustainable development.

Some of the pastoral members of the Working Group do not agree with the requirement for an institutional framework.

1.3 Pastoral Leases (items 7.2 – 7.7, Appendix H)

More specifically on the issue of the form and term of tenure for pastoral purposes, the Working Group considered the following forms of tenure – freehold, perpetual lease, self renewing/rolling lease, longer fixed term lease and covenants on title.

The majority of the Working Group recommends as the preferred form of tenure a Perpetual Lease that is outcomes based (in lieu of the current prescriptive regulated regime, and subject to the concerns of some of the pastoral members that the incentives do not have an adverse effect).

As mentioned, emphasis should be placed on developing an outcomes/incentives based system of land tenure and management. However, it must be recognised that the system must also be supported by a penalty system for defaulting lessees, who are not committed to implementing the outcomes/incentives based principles of their lease.

This two-fold approach is required as a means of achieving the Government's goal of maintaining the rangelands resource for future generations.

Other features of the tenure and management system must address economic, environmental and social factors, as the first part of this approach. These are issues mostly within the terms of reference of the other Working Groups. However, to address the second part of this approach, the proposal for a Perpetual Lease must be supported by administrative mechanisms and processes that ensure:

- (i) an effective monitoring system, that is in a form acceptable to all stakeholders, of the land management condition;
- (ii) an effective penalty system for defaulting lessees;
- (iii) an effective, properly resourced Government administration that monitors land condition, and identifies and enforces compliance by lessees in default of their lease obligations, in a timely and decisive manner; and
- (iv) transparent reporting of the performance and outcomes of that Government administration.

The scope of the monitoring system needs to be broadened from the current rangeland monitoring system to include impacts on biodiversity.

All forms of tenure, whether the preferred tenure of a Perpetual Lease, the existing pastoral lease framework, or any other form of tenure adopted for the rangelands must be supported by these administrative mechanisms and processes.

A system of self renewing/rolling lease tenure would also achieve the same outcomes for pastoral lessees. It is arguable the statutory requirement for periodical reviews before the term is extended provides an additional incentive for improved land management. However, this form of tenure is not as acceptable to the pastoral lessees as a perpetual lease, as it is seen as being less secure.

The conservation members of the Working Group support a self renewing/rolling lease renewable on the basis of a satisfactory environmental report. In their view, it would provide an effectively perpetual lease (subject to satisfactory land management), and greater flexibility in land administration in the public interest. Copies of their minority reports are attached to the Report at Appendix J.

2. *If existing pastoral lessees do not wish to upgrade their tenure (by addressing native title issues), what improvements can be made, within the existing requirements of native title, to the operation of existing pastoral leases under the Land Administration Act 1997 (LAA)?*

A number of different areas are discussed in the Report, where it may be possible to improve the operation of existing pastoral leases within the existing requirements of native title. These areas should be investigated further to determine if these changes can be achieved within those requirements.

2.1 Diversification (items 6.1.1 & 8.1)

Widen the permitted use of pastoral leases under the LAA to include the various activities captured by the definition of “*primary production activities*” in the NTA.

Consider further whether the requirement for a separate permit under Division 5 of the Part 7 of the LAA can be removed. The requirement may be able to be removed for all or some of the permitted purposes, and in all or limited cases.

Investigate purported administrative difficulties in obtaining the statutory permits and licences necessary to undertake particular diversification activities, in an acceptable timeframe.

2.2 Procedure for Renewal of Lease Terms (items 6.1.2 & 8.1)

Amend the LAA to allow for a right of renewal of existing pastoral leases on their expiry, subject to satisfactory land management, rather than the renewal being within the discretion of the Minister.

2.3 Destocking (items 6.1.1 & 8.1)

Amend the LAA to make it clear that a pastoral lease can be destocked, with a power to impose appropriate conditions as part of the approval to destock.

Those conditions may require a security bond to be placed with the Pastoral Lands Board (PLB) to ensure that infrastructure is maintained. Similar provisions as those contained in the *Mining Act 1978* may be appropriate in terms of how the bond may be dealt with by the PLB.

2.4 Compensation (items 6.4.2 & 8.1)

A consistent approach should be adopted by Government to the payment of compensation for land removed from a pastoral lease for public purposes, irrespective of the manner in which it is acquired or taken, and whether it is removed during or at the end of the lease term.

In particular, the 2015 exclusion process has highlighted the inconsistencies in the compensation provisions applicable to pastoral lessees when land is removed from pastoral leases in different situations.

There should be a consistent application of compensation law principles in all cases. Compensation should be paid on the basis of the commercial value of the pastoral business and other uses that are permitted under the pastoral lease, but not any ‘higher’ land use that is not permitted under the current form of tenure.

When land is being considered for removal from a pastoral lease, regard should be had to the continuing viability of the land remaining in the pastoral lease, as well as the intended use of the land being removed. In some cases, there may be little choice as to the location of the land that can be taken (eg. for conservation, to protect a particular species of flora within a defined habitat area). In other cases, there may be a number of options available.

One case of particular significance that was brought to the attention of the Working Group late in its deliberations, relates to the Geraldton to Eastern Goldfields Infrastructure Corridor. Corridors for different services are being scattered across pastoral leases, and are not being co-located within the one corridor. Further consideration of the various issues involved, including the effect on pastoral operations, needs to be undertaken by Government.

2.5 Access (6.3.2 & 8.5)

The rights and responsibilities of pastoral lessees and others having a right to access pastoral leases are to be clearly defined, so as to provide certainty.

A public education program which clearly sets out the rights and responsibilities of the pastoral lessees and others having a right to access pastoral leases would be beneficial.

2.6 Government Land Policy (6.4.3 & 8.3)

Government policies in relation to making Crown land available for alternative uses and tenures and its application of national competition policy (NCP) principles should be reviewed, with a view to developing a more proactive policy that assesses the individual implications of granting improved or alternative tenure in the rangelands.

2.7 Financial Institutions' Requirements (item 6.1.2)

There has been a significant shift and improvement in the lending policy and practices of financial institutions towards the pastoral industry in recent times. The financial institutions advise that pastoral lease tenure is not treated any differently from other forms of tenure.

The major issue considered by a financial institution in assessing an application for finance by a pastoralist is the viability of the business and the ability to service the loan.

Comments by the representatives of financial institutions to the Working Group indicate that the form of the pastoral lease itself is not a major issue considered by the financial institutions, as they have operated on the assumptions that there will continue to be a pastoral industry, and the pastoral leases will be extended or renewed.

However, the financial institutions would support any improvement in the existing pastoral lease or a new form of tenure that addresses the following issues, which are of particular concern to them:

- Native title – lack of knowledge and uncertainty.
- Resumption and compensation – consideration of the effect of removing land from a pastoral lease on the remaining viability of the lease, and adequate compensation for loss of business value irrespective of when the land is removed from the pastoral lease (ie. during or at the end of the lease term).

- Right of renewal – the lessee to have a right of renewal on expiry of the lease, subject only to satisfactory compliance with land management conditions in the lease, and removal of the discretion in the Minister as to whether or not the lease will be renewed.

Comparatively, financial institutions prefer the form of pastoral tenure in some of the other States because there are better provisions in relation to compensation and rights of renewal.

The concerns of the financial institutions in relation to these 3 issues are addressed within the body of the Report.

Discussions by the pastoral members of the Working Group with individual pastoralists continue to indicate that the practices and policies of the financial institutions as advised to the Working Group are not always reflected in the “on the ground” experiences of pastoralists in their dealings with financial institutions.

Another issue of concern raised by some of the pastoral members of the Working Group late in its deliberations is the requirement for the Minister’s consent to a transfer of a lease, particularly if a mortgagee is exercising its power of sale. Pastoralists consider the sale of a pastoral lease being at the discretion of the Minister contributes to their lack of security of tenure..

There are a considerable number of policy issues that are relevant to the exercise of the Minister’s discretion that need to be considered in relation to this issue.

Terms of Reference 2 – Consider current varied renewal timeframes post 2015 for pastoral leases (item 6.1.2)

The existence of differing pastoral lease terms after 2015 is inequitable, particularly when regard is had to the fact that some of the shorter termed pastoral leases came about as a result of administrative processes and not historical fact.

There will be greater uncertainty and less secure tenure for those pastoralists who have shorter lease terms.

Under any tenure system, this anomalous situation of differing terms for pastoral purposes should not be allowed to continue and should be eliminated, so that all pastoralists are on a ‘level playing field’ and have the same lease term.

However, as any increase in the term of these shorter pastoral leases will require native title requirements to be addressed, the Report does not separately consider the issue in detail. The same considerations apply as those that apply to a new or improved form of pastoral tenure generally, discussed in relation to Terms of Reference 1 – Alternative Models of Pastoral Land Tenure.

Terms of Reference 3 – Consider implications of Native Title in relation to alternative models of pastoral land tenure (items 6.3.1 & 8.2)

There does not appear to be a general appreciation among major stakeholders in the pastoral industry that, in order to improve or change a pastoral lessee's tenure, the lessee must actively participate in the native title process, and that the State Government cannot 'fix' native title.

In addition, pastoral lessees currently would prefer for native title claims over their leases to be determined (preferably in as short a timeframe as possible). This will be a time consuming and costly exercise that is unlikely to be proactively pursued by the pastoral lessees.

There is a strong need for an education program to overcome this lack of understanding. A joint approach by Government and pastoral industry representative groups is considered to be the most appropriate course.

This would lead to a greater understanding of the issues involved, and processes available, under the NTA, including the use and benefits of Indigenous Land Use Agreements (ILUAs).

At the broader State and regional levels, there is a need for Government policy to actively pursue a course of addressing native title, access and other issues of Aboriginal people. Once these issues are settled, or a framework or mechanisms are in place to assist particular issues to be resolved, all stakeholders in the pastoral industry, including the pastoral lessees and Aboriginal people, will be in a better position to move forward.

If a framework or mechanism is available for pastoral lessees and Aboriginal people to settle issues of native title and access upfront, it is hoped this will provide greater impetus and incentive to pastoral lessees to take advantage of any new or improved form of land tenure, using that framework or mechanism.

The recommendations and findings of the Aboriginal Access and Living Areas Working Group will most likely be particularly relevant in formulating Government policy in relation to this issue.

In addition, the Working Group identified the following mechanisms for consideration in the development of Government policy in relation to native title, access and other issues of Aboriginal people.

- The development of a Regional Framework Agreement between the State and Aboriginal representative bodies (as has been recently proposed by Aboriginal bodies) may also assist in moving forward the pastoral industry's approach to native title.
- Government to consider giving assistance to a number of pastoral lessees to address the native title requirements as part of a process to change or improve their tenure. These example cases would provide valuable outcomes for the Government and pastoral industry.

Finally, investigations indicate there may be an ability to extend the term of a pastoral lease for a longer term than its original term (including a change to a perpetual lease) using the procedure under s.241D of the NTA. This provision requires a process of notice to, and consultation with, native title holders or claimants. If they maintain an objection, the objection is to be resolved by an independent person.

The Working Group recommends the requirements of this section, and the possible benefits it may provide in moving towards an improvement in the tenure of pastoral lessees, should be investigated further.

Terms of Reference 4 – Undertake detailed analysis of pastoral land tenure systems in NT, Qld and SA (Section 3, Appendix C)

Western Australia is the only State or Territory in which pastoral leases are not either effectively perpetual, or the jurisdiction is moving towards that outcome.

A Comparative Table of Pastoral Lease Provisions in the other States and Territories is at Appendix C.

In summary, the forms of pastoral land tenure in the other jurisdictions are as follows:

- (i) South Australia – system of rolling leases for a term of 42 years, renewable every 14 years subject to satisfactory land condition assessment.
- (ii) Northern Territory – mainly perpetual leases, with some term leases (max 25 years).
- (iii) Queensland – amalgam of freehold, perpetual leases and term leases (max 50 years). Proposal recently released in 2003 to move to a rolling lease concept.
- (iv) New South Wales – perpetual leases and term leases (max 40 years).

Most of the other jurisdictions have undergone changes and improvements to their pastoral tenure in recent years. This has been able to occur relatively easily in the context of native title requirements, for a number of reasons:

- The change took place before the NTA was passed.
- If it did not take place before the NTA was passed, there was a pre-existing right of renewal or right to convert to a better form of tenure in that jurisdiction's land legislation.

Neither of these sets of circumstances apply in Western Australia today, and due to the fact that native title rights vary in respect of the different forms of tenure in each of the jurisdictions, any direct comparison cannot be made between what has happened in the other jurisdictions and what can happen in Western Australia with respect to native title.

The review of developments and comparable provisions in the other jurisdictions reinforces the Working Group's views that there is a need to move towards a tenure system that:

- (a) is effectively a perpetual form of tenure for pastoralists; and
- (b) is less prescriptive, and focuses on outcomes and incentives.

CONCLUSION

A summary of the Working Group's recommendations is set out at the end of this Conclusion.

The Working Group's recommendations provide a system that addresses the major concerns raised at the Gascoyne Muster in May 2002.

A more equitable and secure form of tenure is proposed, that will allow long term investment and financing decisions by pastoralists and financiers to be made with greater confidence. This form of tenure will also accommodate and encourage other land uses in the rangelands.

The main areas of concern to financial institutions are also addressed.

Finally, the recommendations give effect to the Government's policy commitment to ecologically sustainable development of the rangelands, and would need to be read in conjunction with the findings of the Pastoralism for Sustainability Working Group. Any reform of the tenure system must be considered in conjunction with issues relating to the sustainability of pastoral activities.

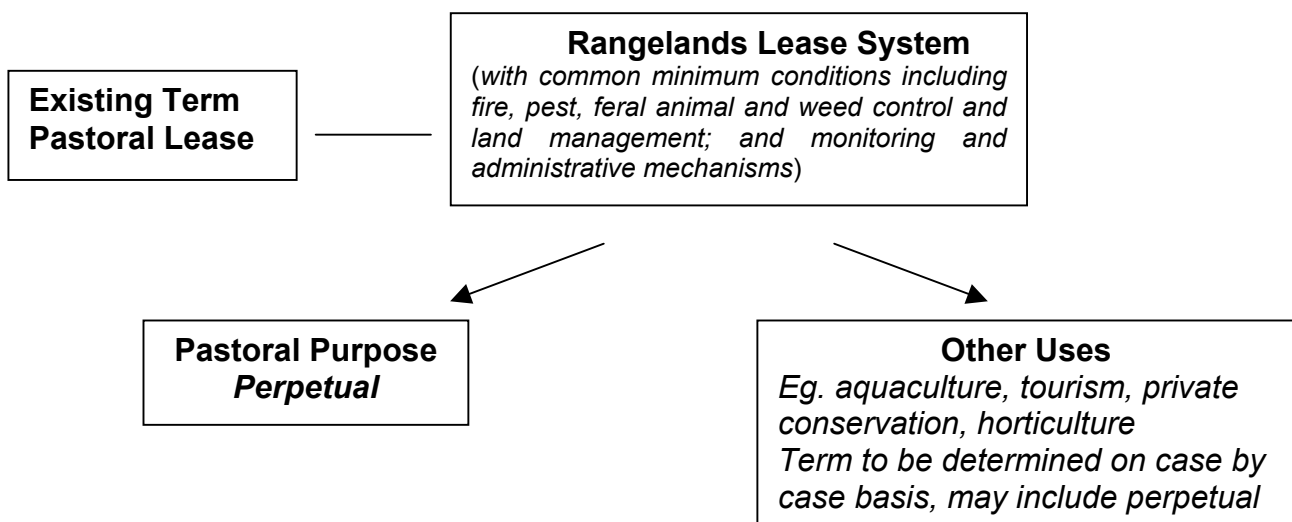
Any alternative form of tenure based on the Working Group's recommendations should be offered on the basis that existing pastoral lessees are given a choice. It is for each of them to choose:

- (i) to remain under their current pastoral lease; or
- (ii) to seek to take advantage of any improved or new form of tenure, which is likely to require the lessee to also participate in the native title process.

Summary of Recommendations

1. Rangelands Lease System

Essentially, the Working Group recommends the development of a "rangelands lease system" that will allow for any appropriate land use (with conditions applicable to the proposed use), but which will contain minimum conditions relating to land management. These minimum conditions will apply to all "rangelands" leases, no matter for what purpose the land is used. One category will be for "pastoral purposes".



2. Institutional Framework for Rangelands

In this broader context also, the majority of the Working Group is of the view that there is an urgent need for the Government to develop an overriding institutional framework for managing the rangelands. Some of the pastoral members of the Working Group do not agree with this recommendation.

3. Pastoral Leases

The majority of the Working Group recommends as the preferred form of tenure a Perpetual Lease that is outcomes based (in lieu of the current prescriptive regulated regime).

Features of the lease must address economic, environmental and social factors (being issues mostly within the terms of reference of the other Working Groups). In addition, the proposal for a Perpetual Lease (or any other form of tenure including the existing pastoral lease framework) must be supported by administrative mechanisms and processes that ensure an effective monitoring system; an effective penalty system for defaulting lessees; an effective, properly resourced Government administration; and transparent reporting of the performance and outcomes of that Government administration.

A system of self renewing/rolling lease tenure would also achieve the same outcomes for pastoral lessees. It is arguable the statutory requirement for periodical reviews before the term is extended provides an additional incentive for improved land management. However, this form of tenure is not as acceptable to the pastoral lessees as a perpetual lease.

The conservation members of the Working Group support a self renewing/rolling lease, renewable on the basis of a satisfactory environmental report.

4. Diversification

Widen the permitted use of pastoral leases under the LAA to include the various activities captured by the definition of "*primary production activities*" in the NTA.

Consider further whether the requirement for a separate permit under Division 5 of the Part 7 of the LAA can be removed.

5. Procedure for Renewal of Lease Terms

Amend the LAA to allow for a right of renewal of existing pastoral leases on their expiry, subject to satisfactory land management, rather than the renewal being within the discretion of the Minister.

6. Destocking

Amend the LAA to make it clear that a pastoral lease can be destocked, with a power to impose appropriate conditions as part of the approval to destock.

7. Compensation

There should be a consistent application of compensation law principles in all cases of land being removed from a pastoral lease for public purposes. Compensation should be paid on the basis of the commercial value of the pastoral business and other uses that are permitted under the pastoral lease, but not any 'higher' land use that is not permitted under that form of tenure.

When land is being considered for removal from a pastoral lease, regard should be had to the continuing viability of land remaining in the pastoral lease, as well as the intended use of the land being removed.

8. Access

The rights and responsibilities of pastoral lessees and others having a right to access pastoral leases are to be clearly defined, so as to provide certainty.

9. Government Land Policy

Government policies in relation to making Crown land available for alternative uses and tenures, and its application of NCP principles should be reviewed, with a view to developing a more proactive policy that assesses the individual implications of granting improved or alternative tenure in the rangelands.

10. Native Title

An education program to provide information to pastoral lessees as to how they may actively participate in the native title process, including the use of ILUAs. A joint approach by Government and pastoral industry representative groups is considered to be the most appropriate course.

At the broader State and regional levels, there is a need for Government policy to actively pursue a course of addressing native title, access and other issues of Aboriginal people, so as to provide a framework or mechanism for individual issues to be resolved.

In addition to the recommendations and findings of the Aboriginal Access and Living Areas Working Group, the following mechanisms are suggested for consideration in the development of that Government policy.

- The development of a Regional Framework Agreement between the State and Aboriginal representative bodies (as has been recently proposed by Aboriginal bodies).
- Government to consider giving assistance to selected pastoral lessees to address the native title requirements as part of a process to change or improve their tenure.

Investigate further if the procedure under s.24ID of the NTA is available to extend the term of a pastoral lease for a longer term than its original term (including a change to a perpetual lease).

**PASTORAL INDUSTRY ECONOMIC
MONITORING REQUIREMENTS
WORKING GROUP**

PASTORAL INDUSTRY ECONOMIC MONITORING REQUIREMENTS WORKING GROUP

SUMMARY OF RECOMMENDATIONS

Terms of Reference

- Research and identify the data that is currently collected by the PLB and Department of Agriculture in relation to the pastoral businesses;
- Review and identify what information needs to be collected to assist policy development for future beneficial use of the rangelands industries. The triple bottom line performance indicators of social, economic and environmental factors need to be taken into account;
- Review economic data modelling, benchmarking and other approaches undertaken by other States in Australia;
- Research and develop recommendations for an economic data model for the pastoral industry.

Recommendation 1

That a formalised continuous improvement framework be used by the administrators/managers of pastoral lands.

Recommendation 2

That clear objectives and targets are set (at a range of scales) that when monitored provide performance information against those targets.

Recommendation 3

There be industry education on the differences between Australian Bureau of Agriculture and Resource Economics (ABARE) and Australian Bureau of Statistics (ABS) data.

That there be education/communication to encourage pastoralists to provide true and correct information given policy makers use this information to set the industry's strategic direction.

Recommendation 5

That the ABARE Farm Survey information be routinely collected to at least the regional scale, i.e. Kimberley, Pilbara, Gascoyne, Murchison, Goldfields/Nullabor.

Recommendation 6

The concept of a Sustainability Index be used as the basis for further refinement as a triple-bottom line monitoring framework for the pastoral industry of Western Australia.

PASTORALISM FOR SUSTAINABILITY WORKING GROUP

PASTORALISM FOR SUSTAINABILITY WORKING GROUP

SUMMARY OF RECOMMENDATIONS

The Working Group recommends:

ECONOMIC SUSTAINABILITY

Recommendation 1

- Research into improved grazing systems is required to assess the impacts of new grazing techniques on productive capacity, impacts on pasture condition and biodiversity. This research should be conducted in partnership with the industry.

Recommendation 2

- Support for seasonal forecasting in the rangelands.
- Pastoralists have access to training, tools and information for rangeland management practices and dry season planning.

Recommendation 3

- That all land-holders across the rangelands, including the Crown, need to work actively in partnership to achieve the mutual objective of effective control of all pests and weeds across the rangelands.
- Pastoral enterprises wishing to run managed goats do so to Best Practice Guidelines.
- Harvesting of unmanaged goats to be phased out.
- Tagging of managed goats to be phased in over 3 years time span by the tagging of juveniles into a managed herd.
- All declared animals to be managed under the ARRPA (1976).
- The routine collection (3 –5 yearly) of abundance surveys of goat, kangaroo and donkey populations be undertaken.
- Research on the effects of kangaroo populations on rangeland productivity and control methods be undertaken.

Recommendation 4

- The current Pastoral Lease Rent System remains.
- The Pastoral Lands Board investigate the desirability of making permits transferable.
- That a paper on rent calculations be produced for pastoralists to ensure transparency and understanding of the process.

- The Pastoral Lands Board evaluate the use of moving pastoral lease services onto a cost *recovery basis*.

ENVIRONMENTAL SUSTAINABILITY

Recommendation 5

- In addition to Western Australian Rangelands Monitoring sites an enhanced series of ungrazed monitoring sites need to be established that cover those areas set aside on leases or managed within leases for conservation purposes and formal conservation reserves.
- A standard set of indicators be developed of relevance to specific regions to measure performance of biodiversity in terms of species abundance, distribution and diversity.
- A further standard set of indicators be developed to assess performance across the landscape in controlling the threatening processes associated with feral animals, changed fire regimes, grazing pressure, weeds, and changed hydrology.
- A set of management targets be established for all land managers in relation to the above indicators.
- Performance of management against the targets and indicators be assessed on a regular basis, taking into account seasonal conditions, in particular rainfall.
- Reports on the above assessments be made public.
- Exploration of voluntary off-reserve conservation (with lease conditions and rent credits) under management of the owner/lessee - with approval of the Minister. Flexibility and legislative change to be considered.
- Development of new legislatively backed means to provide for permanent private biodiversity protection efforts on pastoral leases building on existing voluntary and temporary systems including section 16A of the *Conservation and Land Management Act 1984*.
- Consider covenants attached to the lease between the Crown and, for example, a Conservation Group, National Trust, DCLM, etc; when the lease is renewed the 'covenant' becomes an enduring lease condition.
- Private or commercial conservation may require a dual title lease - pastoral leasehold tenure remaining but operated as a conservation area with conservation being a legitimate form of pastoral activity. Pastoral purposes in the LAA Section 103 - "The Minister may, in consultation with the Board, include in a pastoral lease in any terms, reservations, conditions, covenants, or penalties not inconsistent with this Act".
- Arrangements to facilitate the employment of pastoral lessees and indigenous people as resident managers of voluntary off-reserve conservation reserves should be investigated.

Recommendation 6

- Investigate the suitability of the WARMS program and other monitoring systems including suitable systems for biodiversity monitoring.
- Pastoralists be encouraged to establish voluntary monitoring sites on leases as part of a Property Management Plan.
- The Department of Agriculture and Department of Conservation and Land Management work together to develop improved remote sensing technology to monitor range condition and biodiversity.
- Pastoral Lands Board investigate means to encourage voluntary monitoring on pastoral leases.
- Expansion of the Environmental Management Unit property management planning process.
- Expansion of property management training for lessees to enable them to meet the requirements of performance objectives on their lease.
- Encourage pastoralists to develop and adopt accredited Environmental Management Systems for their lease-holdings.

Recommendation 7

- The findings of fire research should be widely extended throughout the rangelands to land managers.
- The impact of fire on rangeland vegetation should be examined in other regions.

Recommendation 8

- The Pastoral Lands Board compile an annual report to the Natural Resource Management Council (NRMC) and EPA on the state of the rangelands.
- The PLB consider adopting the following (or other suitable) indicators:

ENVIRONMENTAL INDICATORS

- Trends in rangeland condition (5 yearly analysis) at a regional level.
- Trends in seasonal conditions and on NDVI data at a regional level.
- Trend in biodiversity on representative grazed and ungrazed sites.
- Number of pastoral leases with property management plans.

ECONOMIC INDICATORS

- Trends in net farm income at a regional level.
- Trends in stock numbers compared with the current carrying capacity at a Land Conservation District level.
- Trends in cattle, sheep and goat turnoff and wool cuts per head at a Land Conservation District level (three yearly).

SOCIAL INDICATORS

- Trends in population number and level of education at a regional level.

OTHER FACTORS INFLUENCING SUSTAINABILITY

Recommendation 9

- That the Minister through the Pastoral Lands Board investigates tenure arrangements that are based on the concept of a Rangelands Lease allowing for uses other than grazing. The ongoing tenure to be performance and incentive-based and supported by Property Management Plans.

Recommendation 10

- The current provisions of the LAA (1997) are sufficient to manage the risk of plant introductions into the rangelands.

INSTITUTIONAL AND LEGISLATIVE ARRANGEMENTS

Recommendation 11

- The role and function of the PLB be reviewed to meet the changing nature of the rangelands. The Board should have an enhanced focus on:
 - (a) providing policy advice to Minister on the pastoral industry to enable ecological, economic and social sustainability;
 - (b) developing policy and guidelines to ensure pastoral leases are managed on an ecologically, economically and socially sustainable basis; and
 - (c) reporting on the state of the rangelands as part of the State Sustainability Strategy.
- To enable the Board to provide adequate advice on its recommended broadened role, the Minister should ensure the Board has an adequate skills base and adequate resources.

Recommendation 12

Support the establishment of a Rangelands Working Group. The group would report to the NRMC in implementing the recommendations of the Working Groups where the issues involved multiple departments. The role of such a group would be to:

- provide a forum across Government for action (coordination);
- have a consultative role with industry; and
- address the wider rangeland issues (marine, estuarine).

Recommendation 13

- The development of a Statement of Planning Policy for the Rangelands.
- The Department for Planning and Infrastructure manage approvals of lease subdivision in accord with land use planning.
- Utilise planning Schemes to manage land use changes in the rangelands through development approvals.

- Agencies responsible for infrastructure developments should ensure their activities are consistent with sustainable land use.

Recommendation 14

- Interim monitoring of exclusion areas prior to 2015 should be undertaken under the auspices of the PLB to ensure the preservation of the value of the land. This monitoring will need to involve other Agencies and will require the commitment of funding.
- Institutional arrangements should not be an impediment to industry restructuring.

INTERIM REPORT RECOMMENDATIONS FROM APPENDIX 1

Recommendation 15

- Wherever land is excluded from pastoral leases, funding should be set aside to ensure security of resources for enduring and permanent management of the area. Ongoing management of excluded areas must be based on the “good neighbour policy” to ensure that diverse land uses do not impact adversely on adjoining lands and enterprises.
- In addition to considerations on a lease by lease basis, the cumulative impact of exclusions on a subregional/regional basis and on the pastoral industry as a whole should be considered. Particular reference should be made to the contribution of the export beef cattle industry to the State economy. The program of exclusions should not result in any net loss of population or social infrastructure in the rangelands. To this end, the State Government should play a role in brokering and supporting the development of alliances between various community and stakeholder groups living and operating in the rangelands.
- We recommend that Government develops, as soon as possible, appropriate legal and tenure arrangements for the management of whole or part pastoral leases for biodiversity conservation purposes. This Group will further examine the legislative impediments to providing long-term security for such agreements (eg embedding them as a condition of the lease itself) –with particular reference to the LAA and the *Conservation and Land Management Act 1984* (Section 16A). Recognition of conservation as a pastoral purpose within the LAA is one of the legislative reforms to be explored.
- This Group does not support exclusion to be used for roads for management access to conservation areas. Management access arrangements should be negotiated between the Minister, the lessee, the Local Government Authority and DCLM.