



Pastoral Lands Board

Policy Statement No. 11

Policy Title

SUBLEASING OF LEASES

Policy Statement

From time to time a pastoral leaseholder may wish to sublease any part or all of the lease area to a third party. The subleasing of leases requires the written approval of the Minister (or their delegate). This policy sets the conditions under which this may occur.

Purpose / Objective

To outline the requirements and conditions for a pastoral leaseholder seeking approval to sublet any part or all of a pastoral lease to a third party.

Under section 134 of the *Land Administration Act 1997*, a pastoral leaseholder may not sublease any part or all of its pastoral lease without the prior written approval of the Minister.

Background

Pastoral leaseholders have a pastoral lease with the State of Western Australia, who is the landlord. Pastoral leases are administered under the *Land Administration Act 1997* by the Minister for Lands on behalf of the State. The Pastoral Lands Board (PLB) provides advice, assistance and recommendations to the Minister in the administration of the pastoral leases. The *Land Administration Act 1997* sets out a number of requirements with which pastoral leaseholders must comply. These include:

- Pastoral land cannot be used for purposes other than pastoral purposes without a permit (s.106(1));
- The pastoral leaseholder must develop or improve the pastoral lease on direction from the PLB. The pastoral leaseholder may be required to submit a development/management plan for the progressive achievement of those improvements to a specified timeframe satisfactory to the PLB (s.107);
- The pastoral lease must be managed and worked to its best advantage as a pastoral property (s.108(1));
- The pastoral leaseholder must use methods of best pastoral and environmental management practice, appropriate to the area, for the management of stock and for the management, conservation and regeneration of pasture for grazing (s.108(2));

- Pastoral land may not be sown with non-indigenous pastures without a permit (s.110);
- The lease must be stocked within the limits determined by the PLB (s.111);
- The pastoral lease holder must comply with all conditions of soil conservation notices issued by the Commissioner of Soil and Land Conservation (s.112); and

The pastoral leaseholder must by 31 December each year, submit a 'Return of Livestock and Improvements' to the PLB pertaining to the number of stock on the lease and particulars relating to improvements and permit activities (s.113).

Delegations

The Pastoral Lands Board retains its authority to recommend to the Minister (or their delegate), the approval (or otherwise) of the subleasing of a pastoral lease.

The Minister for Lands retains his authority to approve (or not to approve) the subleasing of a pastoral lease.

Certain staff of the Department of Regional Development and Lands (RDL), Pastoral Land unit, have delegated authority from the Minister to approve (or not to approve) applications for subleasing under s.134 of the *Land Administration Act 1997*.

Policy / Legislative Base

Land Administration Act 1997

Found at the State Law Publisher website:

http://www.slp.wa.gov.au/legislation/statutes.nsf/main_actsif_1.html

Definitions

"Minister" means the Minister for Lands, a body corporate continued under the *Land Administration Act 1997*.

"Pastoral lease" can also be termed Head Lease or Crown Lease, all of which for the purposes of this subleasing policy have the same meaning.

"Sublessor" means the individual or company holding the pastoral lease as lessee, who seeks to sublease any part or all of a pastoral lease to another individual or company.

"Sublessee" means the individual or company holding the sublease.

**Policy
Implementation
Guidelines**

The following should be considered and adhered to in the development of an application to sublease:

- (a) Prior to subleasing any part or all of a pastoral lease to a third party, the pastoral leaseholder must seek prior written approval from the Minister (or their delegate). The PLB considers the application for subleasing and provides its recommendation to the Minister (or their delegate).
- (b) The pastoral leaseholder and/or sublessee (if applicable) must provide in writing to the PLB why they are seeking to sublease any part or all of a pastoral lease. The submission must indicate whether the pastoral leaseholder has considered selling or transferring the pastoral lease if the reason for subleasing is an incapacity to operate the lease to its best pastoral advantage (s.108(1)).
- (c) The pastoral leaseholder must ensure the sublessee understands the requirements of a pastoral lessee under the *Land Administration Act 1997*, particularly Part 7, Division 4 – Conditions of a pastoral lease.
- (d) A sublease can not be inconsistent with the pastoral lease (the head lease).
- (e) Land under a sublease can only be used for pastoral purposes or as permitted under a permit issued under Part 7, Division 5 of the *Land Administration Act 1997*.
- (f) The pastoral leaseholder is to acknowledge in writing on making the application to sublease and then if approved, on the granting of a sublease, that the pastoral leaseholder and NOT the sublessee, will remain accountable to the PLB, and any breaches, even if performed by the sub-lessee, will be the responsibility of the pastoral leaseholder.
- (g) The application for sublease must also state the communication and administration arrangements from the pastoral leaseholder through to the end sublessee (if more than one sublease is in existence) to provide comfort to the PLB that the pastoral leaseholder is not too far removed from the operations on the pastoral lease.
- (h) The pastoral leaseholder is to ensure the sublessee(s) record and maintain information to the satisfaction of the pastoral leaseholder and that this requirement is detailed in the sublease to enable the pastoral leaseholder to provide to the PLB a consolidated 'Annual Return of Livestock and Improvements' by 31 December of each year (s.113 of the *Land Administration Act 1997*).
- (i) The pastoral leaseholder as the registered lessee remains the primary contact point for the PLB for all matters pertaining to the land administration and operation of the lease. This includes the payment of rent; submission of signed documents

required by the PLB; correspondence in relation to a Rangeland Condition Assessment (RCA); and formal advice of lease contact detail changes.

- (j) A sublessee must abide by the conditions contained in the pastoral lease and the *Land Administration Act 1997* for the area of land in the sub-lease.
- (k) An assignment clause must be included in the sublease clearly stating that the sublessee may NOT assign or otherwise dispose of its interest in the sublease without the pastoral leaseholder first obtaining the approval of the Minister.
- (l) A sublease must be registered on the certificate of Crown land title for the pastoral lease (in accordance with section 19 of the *Land Administration Act 1997*) at Landgate within 14 days from the date of the granting of Ministerial approval.
- (m) The PLB may require a Range Condition Assessment (RCA) if one has not been done within the previous three years or at the discretion of the PLB (e.g. if there have been outstanding issues on the lease). This will provide a baseline for the pastoral leaseholder in terms of the condition of the lease, and may safeguard against any future disputes between the pastoral leaseholder and the sublessee on work required on the lease.
- (n) The PLB may undertake further RCA(s) during the term of the sublease.
- (o) Where a PLB approved development/management plan is in place, the pastoral leaseholder must ensure that the sublessee is aware of commitments made under that approved plan and that any departure from the approved plan will require further specific approval of the PLB, and must ensure that the sublessee complies with the approved plan as it applies to the subleased area.
- (p) Permits held by the pastoral leaseholder are not transferable to a sublessee, nor can a sublessee be granted a permit under Part 7, Division 5 of the *Land Administration Act 1997*.
- (q) A sublease is not to be confused with an agistment which is an arrangement for a finite period over the short to medium term (up to three years) where the pastoral leaseholder directly manages the livestock owned by a third party. An agistment arrangement requires application to and approval by the PLB under section 111 of the *Land Administration Act 1997* (see Policy Statement No.1).

Written applications for subleasing are to be delivered to:

Executive Officer
Pastoral Lands Board
Department of Regional Development and Lands
PO Box 1575
MIDLAND WA 6936

Related Documents

- Policy Statement No.1 – Agistment of Stock on Pastoral Leased Land
- Guidelines – Management/Development Plan of Pastoral Land
- Guidelines – Standard Conditions of Transfer of a Pastoral Lease
- Landgate Sub-lease Registration Form - L2C-LAA 1065
(found at: www.landgate.wa.gov.au using the 'Search' tool)

Date of Approval of *Original* Version

19 December 2003

Date of Approval of *Current* Version

30 June 2009

Further Information

Department of Regional Development and Lands
Lands Division - Pastoral Land
08 9347 5126 or plb@lands.rdl.wa.gov.au

Version

3.0

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