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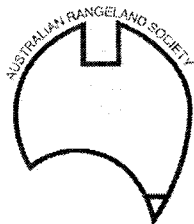
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# NON-PASTORAL LAND USES IN THE AUSTRALIAN RANGELANDS\*

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## ABSTRACT

This paper considers how pastoral lease arrangements may affect the emergence of non-pastoral land uses in the Australian rangelands. Non-pastoral land uses can include farming of non-conventional livestock, tourism and conservation of native wildlife. Pastoral lease arrangements, such as lease conditions, can constrain the emergence of non-pastoral land uses. Further, uncertainty surrounding property rights retained by State and Territory Governments may also influence the emergence of non-pastoral land uses. More outcome-focused pastoral lease arrangements may better facilitate pastoral and non-pastoral land uses in the future. Further review of the net public benefits from retaining the pastoral lease arrangements in their current form may be warranted.

## INTRODUCTION

Pastoral leases are a form of land tenure covering some 44 per cent (338 million hectares) of Australia's mainland area. The pastoral leases are generally situated in the arid and semi-arid regions and the tropical savannas — Australia's rangelands. The predominant use of pastoral leases has been for the grazing of livestock (primarily sheep and cattle). However, there is increasing demand for pastoral leasehold land for non-pastoral uses, such as farming of non-conventional livestock (including goats, kangaroos and camels), tourism and conservation of native wildlife.

The further emergence of non-pastoral land uses may increase the efficiency of resource use, provide development opportunities for rural and regional communities and contribute to ecologically sustainable land management. Some non-pastoral land uses, such as eco-tourism and conservation of biodiversity, may provide particular environmental benefits. Current pastoral lease arrangements may, however, affect the emergence of non-pastoral land uses. As a consequence, innovative land uses and potential economic and ecological gains, that could benefit land managers and the wider community, may be stifled.

The operating characteristics of farm businesses on pastoral leases vary across jurisdictions according to: location, seasonal conditions, the size of the pastoral lease and the management structure. Both larger corporate enterprises and smaller family enterprises may benefit from realising opportunities for non-pastoral land use through diversification and/or a change in primary land use.

## PASTORAL LEASEHOLD TENURE

In Australia, pastoral lease arrangements have evolved since the mid-1840s as an administrative and prescriptive approach to land management. The initial objectives of governments were to control early pastoral activity, and to facilitate land development and closer settlement. More recently, governments have focused on ecologically sustainable land management, and greater monitoring and control of pastoral land use (see Holmes 2000 for a historical review of government pastoral lease objectives).

State and Territory Governments have the primary responsibility for the management of pastoral leases. New South Wales, the Northern Territory, Queensland, South Australia and Western Australia have land management legislation for the administration of pastoral leases. Commonwealth, State and Territory legislation pertaining to native title, mining, and native vegetation also affects the operation of pastoral leases.

Native title is a key element of the broader institutional framework affecting pastoral leases. Where native title is applicable, diversification and/or a change in the primary land use on a pastoral lease must be consistent with the Native Title Act 1993 (Cwlth). The legal and institutional relationship between native title and pastoral leases may be influenced by future court determinations.

Pastoral leasehold tenure provides a more restricted range of property rights than freehold land. A pastoral lease provides lessees with an exclusive right to conduct activities associated with pastoralism, including raising livestock and developing the infrastructure necessary for pastoralism. Activities not within the terms of a lease, such as operating an eco-tourism business or a private conservation initiative, are subject to government approval. Governments also have the power to resume pastoral leasehold land for a wide range of purposes, such as for public infrastructure or to establish a national park.

## **PASTORAL LEASES AND CONDITIONS**

Generally, pastoral lease arrangements are not specified in terms of performance goals or outcomes. The arrangements typically focus on control of the specific use of land for pastoralism, rather than addressing the management of the underlying natural resource base — for example, lease conditions take a prescriptive approach to managing land use by specifying the type and level of stock that must be grazed. Other lease conditions require the maintenance of fencing and other pastoral infrastructure.

Prescriptive control of inputs or management processes can reduce flexibility and hinder innovation (see Banks 2001). The pastoral lease arrangements lack flexibility to accommodate different or changing circumstances, and to enable resource managers to choose the most cost-effective ways of complying with lease conditions. More recently, the New South Wales independent review of the Western Lands Act 1901 recommended a move from prescriptive activity-based land legislation to more outcome-focused, natural resource management-based legislation (Hyder Consulting 2000).

Different jurisdictions charge different percentage rental rates on the unimproved value of the land, ranging from 0.8 per cent in Queensland to 2.7 per cent in South Australia. The basis for establishing the rental rates, and the reasons for the different rates between jurisdictions, are unclear. In some jurisdictions, pastoral lease rentals do not cover the costs of administering the pastoral lease arrangements. A related issue is the appropriate commercial rental return to governments for the use of a pastoral lease — further research is required on this issue.

## **DEMAND FOR NON-PASTORAL LAND USES**

In recent years, there has been a growing interest in non-pastoral uses of pastoral leasehold land from a diverse range of user groups including: pastoralists; traditional owners; tourism operators and private conservation groups. Non-pastoral land uses may occur on a pastoral lease through diversification and/or through a change in the primary land use — where this is permitted by pastoral lease arrangements.

Diversification involves the complementary use of part of a pastoral lease, where pastoralism remains the dominant activity. This could include the development of a feedlot, forestry development, aquaculture, farmstay tourism, harvesting of feral animals, recreational activities, and documentary- and film-making. At times, a number of these activities may occur at the same time on a pastoral lease and be undertaken by both the lessee and third party users, such as tour operators.

A change in the primary land use involves a change from pastoralism to some other activity including: farming of non-conventional livestock (such as goats, kangaroos or camels); traditional use; ecotourism; and conservation of biodiversity. Sustainable use of native wildlife can enable the private sector both to obtain financial returns and contribute to conservation of biodiversity (for example, see Senate Rural and Regional Affairs and Transport References Committee 1998 and PC 2001b).

A number of private conservation initiatives are taking place on pastoral leases — for example: Birds Australia has purchased Gluepot Station in South Australia and Newhaven in Northern Territory; the Australian Bush Heritage Trust has purchased Carnarvon Station in Central Queensland; and the Australian Wildlife Conservancy is seeking to purchase Mt Zero, North Queensland, and take ownership of Scotia in Western NSW from Earth Sanctuaries Ltd (see PC 2001a and 2001b).

As well as complying with pastoral lease and native title arrangements, a non-pastoral land use would also need to comply with other legislative requirements; for example, local planning controls and vegetation clearance controls.

There may be limited commercial opportunities for non-pastoral land uses on remote pastoral leases, and/or on pastoral leases that do not have scenic landscapes, significant native wildlife or heritage attractions. On these leases, the options for non-pastoral land use may be limited to sustainable use of native wildlife and/or conservation of biodiversity. Opportunities for non-pastoral land uses will also be affected by other factors, such as access to finance, infrastructure, and information.

### **ACCOMMODATION OF NON-PASTORAL LAND USES**

Until recently, the main approach to accommodating non-pastoral land uses was by discretionary changes to lease conditions and rental rates by the relevant managing authority. This discretionary approach, while providing some scope for non-pastoral land uses, lacks transparency and may also involve inconsistencies, thereby creating uncertainty for investment decisions.

Some jurisdictions, such as Western Australia, use permits to regulate non-pastoral land uses. While providing a more transparent framework, the capacity for permits to facilitate non-pastoral land use, under the current arrangements, is limited in that they are generally issued for short timeframes and are not transferable with the lease title.

Where concurrent multiple use by lessees and/or third party users is an option, effective access provisions are crucial to allowing third parties to conduct their activity, while protecting the rights of lessees (including indemnity from public liability), and the rights of native title holders.

A key element of effective access provisions is whether adequate procedures exist for dispute settlement between lessees and third party users. In the first instance, access rights will need to set out clearly third party property rights, including conditions and responsibilities of access. Where disputes do arise, pastoral lease arrangements will need to include transparent and well defined processes for dispute settlement.

A further option for non-pastoral land uses, particularly where these are to become the primary land use, is to change the tenure for all or part of a pastoral lease. For example, Queensland diversification guidelines outline several tenure conversion options (DNRM 2002):

- excision of part of the existing lease and the issue of a term lease over that part, with or without tendering for the excision;
- surrender of the whole lease and the issue of a new term lease over that part, with or without tendering for the new lease; or
- conversion of the lease to freehold tenure.

In New Zealand, tenure conversion is currently being examined through an institutional process called tenure review that has the capacity to convert pastoral tenure to freehold tenure. It involves the Government and a lessee voluntarily negotiating an agreement, whereby land with commercial production potential is freeholded and land with high conservation values is transferred to the public conservation estate. Notwithstanding concerns about the costs and length of the process, tenure review appears to

provide for a range of more intensive pastoral and non-pastoral land uses on formerly pastoral leasehold land. Tenure review will reduce ongoing government costs of pastoral lease administration, but there will be additional government costs to manage the expanded public conservation estate.

In Australia, where applicable, changes to existing land uses need to be consistent with native title. Other than seeking court determinations over native title rights, lessees, governments and traditional owners may seek to negotiate Indigenous Land Use Agreements for non-pastoral land uses.

## **REVIEWS OF PASTORAL LEASE ARRANGEMENTS**

At various times, individual jurisdictions in Australia have reviewed the administration and management of pastoral leases. However, the focus on pastoralism and the use of leases and conditions that facilitate and support pastoral land use have largely been retained.

Pastoral lease arrangements typically inhibit competition between pastoral and non-pastoral land uses. The arrangements are generally designed to support and facilitate pastoralism, and thereby constrain other land uses and impose barriers to entry. Further, the arrangements may increase the relative costs and risks of managing land for non-pastoral land uses and influence investment decisions.

One approach that could be used to examine the constraints on non-pastoral land use within the current State and Territory land management legislation is National Competition Policy (NCP).

In April 1995, all Australian Governments agreed to implement a National Competition Policy (NCP), to widen the scope for competition to promote economic growth and higher living standards for the community. Under the NCP, governments were required to review and, where appropriate, reform all legislation that restricted competition unless the benefits of the restriction to the community as a whole outweighed the costs, and the objectives of the legislation could only be achieved by restricting competition (see NCC 2001).

The application of NCP to review State and Territory land management legislation appears to have been somewhat limited. Typically, the NCP reviews have not addressed the underlying pastoral lease arrangements or the facilitation and support for pastoralism compared to non-pastoral land uses.

There is a case for a more comprehensive review of the net public benefits from retaining the pastoral lease arrangements. NCP could provide a suitable review framework while recognising the particular circumstances existing in each jurisdiction. Among other things, such a review of pastoral lease arrangements could consider:

- any constraints on the efficient allocation and use of pastoral leasehold land;
- the regulatory complexity of the pastoral lease arrangements;
- pastoral lease rentals and returns; and
- lease term, renewal and compensation provisions.

The relative performance of different land tenure systems in achieving desired natural resource management outcomes could also be examined, to inform future land tenure administration and management arrangements for the rangelands.

Clear and effective property rights enable the efficient exchange of a resource, good or service through a market. Property rights comprise the bundle of ownership, use and entitlement rights that a user has over a particular resource, good or service and include any responsibilities that the user may have to others (PC 2001b).

There appears to be a lack of clarity and certainty as to the property rights conferred by pastoral lease arrangements for both lessees and sectoral groups, such as conservation or recreation groups with an interest in pastoral leases. For example, some lessees view a pastoral lease as being 'as good as freehold' whereas some sectoral groups view leases as 'public land' with a range of values to be held in the public interest (see Hyder Consulting 2000). Security of tenure is a key issue for lessees (see AgForce 2002).

A key question for further research is to what extent are pastoral lease arrangements still an appropriate policy instrument. If public ownership and administration is still appropriate (and further examination of its costs and returns is warranted), then more outcome-focused pastoral lease arrangements may better provide for the long term economic and ecological prospects of Australia's rangelands. Further, a shift to more 'neutral' lease arrangements may better facilitate non-pastoral land uses, but any substantial change would need to be consistent with the broader institutional structure, including native title.

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