



LAND AND PUBLIC WORKS LEGISLATION AMENDMENT BILL 2022

Drivers for Change

1. Diversification Lease

Need for a new form of non-exclusive leasehold tenure for uses such as renewable energy (hydrogen) to facilitate demand for multiple land uses at the broad scale without compromising access by other key interests such as the resource sector and native title parties

2. Administrative Improvements

Need to facilitate and improve land tenure approvals and projects by updating the *Land Administration Act 1997* (LAA) and s2 *Public Works Act 1902*

3. Pastoral Amendments

Incorporate recommendations for pastoral lands reform made by the Auditor General as well as amendments to the pastoral rent methodology

Objectives

- Enabling net zero emissions by 2050
- Economic diversification and activation
- Facilitating multiple land uses at a broad scale
- Promoting more active land management on Unallocated Crown Land (UCL)/Unmanaged Reserves (UMR) (reducing cost and risk to State and taxpayers)
- Facilitating investment in pastoralism and other industries, such as renewable energy, economic opportunities for Aboriginal people
- Better social, economic and environmental outcomes by encouraging more use of currently underutilised land
- Administrative improvements and red tape reduction

Diversification Lease

- Non-exclusive tenure similar to a pastoral lease – access for Aboriginal persons/native title holders and resources industry
- Will be ‘Crown land’ under the *Mining Act 1978*
- Some identified areas of ‘exclusivity’ – for substantial structures associated with intensive use such as processing plants, solar panel arrays and tourism facilities etc.
- Initial approval and any later variation of the purposes of the lease or change to identified ‘exclusive use’ areas will require s16(3) approval under the *Mining Act 1978* from Minister for Mines and Petroleum

Diversification Lease

- Enables a wide range of activities on the land, including:
 - Renewable energy (including hydrogen)
 - Tourism
 - Carbon farming
 - Aboriginal land management practices and economic opportunities
 - Environmental off-sets or rehabilitation
 - Conservation
 - Grazing of livestock / agriculture / horticulture
 - Any combination of these, or other types of activities as yet unforeseen



Diversification Lease

- May be a new lease over UCL or UMR and can be granted for any length of term as determined by the Minister
- May be a conversion (by voluntary surrender) of a pastoral lease in whole or in part
- The activity/activities to be conducted will impact the value of the rent and the terms and conditions in the lease

Diversification Lease

- Subject to compliance with *Native Title Act 1993* (Cwlth) – does not extinguish native title
- Similar requirements to manage the land as exists for pastoral leases – e.g. manage pests, vermin and weeds; fire; and adherence to relevant Acts including the *Soil and Land Conservation Act 1945*
- Not designed to replace pastoral leases but as a part of a suite of tenure options for a diverse range of activities on the Rangelands and the State more broadly



Interaction of Diversification lease with the Mining Act

- Intent is to ensure minimal impact on Aboriginal persons, native title holders, miners, explorers and prospectors – intended that these other rights coexist with diversification leases
- Essentially treated the same as a pastoral lease in *Mining Act 1978*



Interaction of Diversification lease with the Mining Act

- Included in definition of 'Crown land' in same way as a pastoral lease
- Same exploring, mining and access limits as on pastoral leases
 - For example, cannot be within 100m of house, substantial building, 400m from water infrastructure
- S5 LAA will still apply such that mining, petroleum and geothermal interests can still be registered over the land



Administrative Improvements

- Addition of Power to Sub-Delegate – s9
- Allow Minister for Lands to hold and deal with land in freehold without having to revest to the Crown estate – s10
- Power for Minister to enter into contracts for services in connection with the administration of Crown land – s10
- Insert a statutory process for consultation with local governments inviting submissions on proposals within 42 days or local government will be deemed to have not made a submission (subject to some practical exemptions) – s14



Administrative Improvements

- Allow Minister to retain conditional freehold land in freehold by being able to forfeit an interest in land rather than the freehold itself – s35
- To provide that conditional tenure land that is simply not used can be forfeited by the Minister for Lands - s35
- Allow Crown land to be specified in three-dimensional configurations (isometric parcels) – s54

Administrative Improvements

Roads

- Removal of the requirement:
 - that land must be unallocated Crown land at the time of road dedication and so may remain subject to encumbrances e.g. an easement – s28 and s56
 - that a road that has been proclaimed as a road under the *Main Roads Act 1930* (MRA) prior to dedication will be under the care, control and management of the local government and instead will be placed with the Commissioner of Main Roads on dedication



Administrative Improvements

Roads

- Ensure that Dampier to Bunbury Natural Gas Pipeline (DBNGP) State corridor rights are not affected by the dedication of a road within the DBNGP corridor
- Enable Commissioner for Main Roads to request the dedication of main roads and to request the closure of main roads
- Provide for a single registration system for land proclaimed under the MRA (but not dedicated)
- Enable the Minister to close a road without a request from local government

Administrative Improvements

Reserves

- Allow interests that exist prior to reservation of Crown land to continue post reservation whether or not a Management Order is granted over the reserve – s22
 - Interest will need to be expressly preserved
- Allow management orders to be varied without consent of interest holders where those interests do not arise from the management order – s46

Administrative Improvements

Reserves

- Allow Minister to partially revoke a management order – s50
- Clarify when compensation is payable for revocation – s50(3)
- Only interests that are expressly preserved will survive revocation – s50(4)

Administrative Improvements

Reserves

- Provide that where the boundaries of a reserve are amended, the existing Management order still applies – s51
- Permit the Minister to revoke without consent if reserve is required for a public work



Administrative Improvements

- Power for Minister to remove an expired lease – s79
- Allow easements in gross to be transferred
- Allow the powers of the Minister in s270 and s271 to be exercised by a management body over its managed reserve
- Allow service of documents by electronic means

Information Sharing

- Evaluating an application for Crown land tenure requires referral to “information sharing agencies”
 - e.g. DFES – if the matter relates to fire management, or local government – to capture interactions between a proposal and the local planning scheme, etc.
- Transparency and clarity around sharing information with other Government Agencies
- Modelled on existing provisions in other legislation, such as the *Biosecurity and Agriculture Management Act 2007*
- Valuation purposes



Information Sharing

- The Department will publish Guidelines regarding the disclosure and/or request for information under the information sharing provisions
- Government Agencies to be defined in the Act as "information sharing agencies", including:
 - Department of Mines, Industry Regulation and Safety
 - Department of Primary Industries and Regional Development
 - Department of Water and Environmental Regulation
 - Local Government Authorities
 - Landgate
 - Department of Biodiversity, Conservation and Attractions
 - Department of Fire and Emergency Services



Pastoral Amendments

- Deferred changes to the renewal provisions
- Ability to Extend Leases out to 50 Years
- Pastoral lease conditions prescribed in regulation



Pastoral Amendments

- Remove potentially circular approval requirements for Permits
- Right to transfer permits
- Ability to renew, amend, suspend or cancel a permit
- Change of Annual Return Dates
 - Currently lessees required to report stock numbers as at 30 June before 31 December each year
 - In future lessees required to report stock numbers as at 31 December before 31 March each year



Pastoral Amendments

- Remove requirement for permission of PLB for agistment of stock
 - Allows lessees to remove stock quickly if required, e.g. in response to seasonal conditions
- New power for PLB to order removal of a specified number of stock
 - In addition to existing power to order reduction to a specified number of stock
 - Response to land condition or land management issue

Pastoral Amendments

- New power for the PLB to issue land condition standards and guidelines
 - Must consult with the Soil and Land Commissioner
- Power for the PLB to specify a date for compliance with Default Notice
 - Currently lessee is required to comply 'forthwith'
- Power for PLB to require a management plan
 - Replaces existing power to require a development plan (limited to physical infrastructure)
 - Response to land condition or land management issues



Pastoral Amendments

- New power for the Minister for Lands to approve one or more land management accreditation systems
- New method of appointing certain members of the PLB but otherwise no changes to the PLB
- Ability to advertise a public offer of a new pastoral lease via alternative means to a newspaper circulating in the state (generally the *West Australian*)

Pastoral Amendments

Amend pastoral rent methodology: 'CPI Model'

- Aims: reduce volatility, improve transparency, and provide sufficient notice of change
- Starting point: 1 July 2024 – the lesser of (a) current rent or (b) average of 1999-2019 determinations
- Increase in line with Consumer Price Index (CPI) each year on 1 July
- Market review by Valuer-General every 10 years (vs 5 years at present) – starting 1 July 2029
- 6 months' notice for all rent changes (currently 0 days)
- Rent relief: Minister for Lands will be able to prescribe a class of pastoral leases for rent relief (i.e. rather than requiring individual applications)



Modernise s2 *Public Works Act 1902* – definition of a public work

- Currently contains archaic list of what are ‘public works’ which are purposes for which land may be taken under Part 9 of LAA
- A number of these are not required e.g. mechanics or miners institutions
- Others that are required e.g. early learning centres, are not currently permitted
- List has been updated in consultation with a number of Government Departments



Next Steps

- Bill drafted
- Bill to be introduced into Parliament in first half of 2022
- Amendments enacted by end of 2022

Questions?



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<https://www.wa.gov.au/organisation/departments-of-planning-lands-and-heritage>



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<https://www.wa.gov.au/government/document-collections/land-and-public-works-legislation-amendment-bill-2022>

Or email LAA2022@dplh.wa.gov.au