



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

- Allows multiple concurrent land uses without the need for permits
- Unlike diversification permits, diversification leases will be registered at Landgate – as a registered legal interest they will be able to be security for borrowings
- Obligation to manage the condition of the land – similar requirements to manage the land as exist for pastoral leases – e.g. manage pests, vermin and weeds; fire; and adherence to relevant Acts including the *Soil and Land Conservation Act 1945*



Diversification Lease

- Subject to compliance with *Native Title Act 1993* (Cwlth) – does not extinguish native title – will require the negotiation of an Indigenous Land Use Agreement
- 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

There are 18 proposed amendments including:

- Allow Minister for Lands to hold and deal with land in freehold without having to revest to the Crown estate
- Allow service of documents by electronic means
- 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)



Administrative Improvements

- Ability to retain conditional freehold land which is forfeited as freehold land (no need to revest) by forfeiting the interest rather than the freehold estate itself
- To provide that conditional tenure land that is simply not used can be forfeited by the Minister for Lands under s35 LAA



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)

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
 - Department of Planning, Lands and Heritage
 - Department of Biodiversity, Conservation and Attractions
 - Department of Fire and Emergency Services



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