



Environmental Defenders Office

18 October 2020

Via email PIRSA.PastoralActReview@sa.gov.au

Re: Pastoral Lands Bill 2020

The Environmental Defenders Office (EDO) is the largest environmental legal centre in the Australia Pacific, dedicated to protecting our climate, communities and shared environment by providing access to justice, running ground breaking litigation and leading law reform advocacy. The EDO makes the following comments and recommendations for amendment:

Key submission

The rangelands are public land which cover approximately 40% of South Australia. There is a strong public interest factor in their management. The rangelands must be managed for the benefit of the current generation and future ones particularly in light of the ever increasing impacts of climate change. There must be a range of checks and balances put in place clearly in the legislation to ensure appropriate and sustainable care of these precious and fragile areas. Unfortunately, the combined effect of a number of provisions in the Bill has the effect of eroding current checks and balances which could lead to inappropriate intensification of land use and widescale degradation of the landscape.

A. Title of the Act and objectives

EDO notes that a key theme in the Consultation Report is “a shared vision... that acknowledges our role as custodians of a unique and important landscape...ensure the long-term sustainable use and conservation of a healthy and biodiverse ecosystem in the rangelands”¹. However, despite extensive feedback during the initial consultation that environmental protections were a key stakeholder issue, the Bill does not engage specifically with environmental protection. Instead the Bill focusses on assessing the capacity of the land. An example of this is the draft objects which centre on the growth of the pastoral industry and do not include various environmental considerations from the current legislation. This is highlighted by removal of the word ‘conservation’ from the title of the Bill. In addition clause 7(a) requires lessees to ‘proactively manage the land for pastoral purposes’ which would appear to be inconsistent with conservation purposes.

The rangelands have low and highly variable levels of rainfall and the sustainability of pastoralism is uncertain. Therefore decisions about how they are to be used are critical and must be approached with extreme caution – the precautionary principle should be embedded in the Act and applied to all decision making.

¹ P1

Rehabilitation as a concept has been largely removed now only existing as a definition and referred to in some public access provisions. The Bill shows a change in purpose from the prevention or minimisation of pastoral land degradation to a greater focus on the economics of pastoralism which is at odds with the current legislation. The EDO does not support the removal of a clear duty to prevent degradation of pastoral land and its indigenous plant and animal life and the decreased importance of ecological sustainability and restoration. The EDO is very concerned there is no explicit duty of non-degradation.

B. Make up of Pastoral Board and decision making

The proposed changes are not supported as the majority will be pastoralists and therefore decision making is likely to clearly favour their interests not the wider public interests in the management of the rangelands. In addition, the removal of a Conservation Council of SA nominee is not supported as such a member can provide a particular perspective and understanding of the many issues affecting management of the rangelands. The EDO recommends the current Board composition remains. In addition, the Board has too much discretion in decision making, for example, clause 27(3) provides that “For the avoidance of doubt, the Board may approve a use of land in accordance with this section even though that use is inconsistent with the use of that land for pastoral purposes” but no further parameters on this are provided.

C. Term of pastoral leases

It is argued that the current forty-two year lease maximum inhibits long term investment and therefore the proposed increase of up to hundred years is justified. The EDO is not aware of solid evidence that this is the case and suggests that there are likely to be a variety of factors considered when such decisions are made including the ability to repay debt.

When considered with the proposal to remove stock limits, the proposed regime gives de facto ownership of this large part of the state to a relatively small and privileged group. There is a real danger that there would be less impetus for good management practices and compliance with lease conditions. Current tenure arrangements have worked satisfactorily for a long period of time and we strongly recommend that on public interest grounds that they are not changed.

The loss in property rights for the State through changing from a maximum forty-two year lease to a hundred year lease is likely to be quite significant. The EDO recommends that this valuation be carried out as part of the review of the Bill.

D. Lease Assessments and Stocking Limits

The Bill refers to assessment every ten years but we are concerned that this is an unachievable goal due to resource constraints. Advice from those who have a long history of working in the

rangelands is that remote sensing cannot replace on ground monitoring but is a useful adjunct to it. Furthermore, remote sensing only works well in a dissected landscape which is not the case with SA. The EDO is concerned that there may be an overreliance on remote sensing over on ground assessment. Fine grained detail may be overlooked when considering pastoral impacts on environmentally sensitive features such as outback springs. We are also concerned about the requirement to give 28 days' notice which may inhibit an appropriate assessment and differs from the current situation.

The removal of the stock limit is not supported. The explanatory guide says that this matter should be left to pastoralists which we say is a dangerous precedent as it may be abused by pastoralists taking advantage and overgrazing, which in turn will lead to detrimental environmental outcomes. There is also evidence of pastoral lands in much better condition due to a stock limit being in place than adjoining freehold land. Rather than stocking levels being the sole responsibility of pastoralists the decision should be based on the best available information. The Pastoral Board has some flexibility in this area – this process has worked well and we strongly recommend that it should continue.

E. Public access to pastoral lands

The EDO is concerned that the Bill reduces the public's right to access pastoral lands and is too heavily weighted in favour of leaseholders. For example, temporary camping is now three days instead of fourteen days. There are currently few public access roads. We are also concerned that there is no mechanism for broader community involvement, especially in relation to the need for and establishment of new public access roads.

F. Alternative land uses

This is a key issue in the Bill. Whilst these are referred to in the explanatory documentation the Bill does not actually list these nor the criteria for deciding what is to be allowed. It is recommended that these be listed in broad terms. Criteria for decision making should be in the Act not policy so there can be certainty and transparency for all stakeholders. Furthermore, it is unclear why the phrase "to support the economic sustainability of pastoralism" is included in clause 27 as it appears to not support activity such as eco tourism. The explanatory guide states that 'Considerations [for what is an alternative land use] are likely to include what impact (positive or negative) the alternative land use will have on the pastoral operations; what impact may it have on any neighbouring leases; what impact may the use have on maintaining land condition and how will this be measured and monitored; and over what timeframe and percentage of the lease will this non pastoral activity occur.' It is clearly the intention that alternative uses should relate to ongoing or future grazing and business diversification.

G. Misuse of pastoral land

Trespassing and other offences attract large maximum penalties and it is our concern that given the public's interest in the rangelands they may be unfairly impacted. The regime needs to be appropriately scaled.

Please email the writer at Melissa.ballantyne@edo.org.au with any queries.

Yours sincerely,
Environmental Defenders Office

A handwritten signature in cursive script that reads "mBallantyne". The signature is written in black ink on a light-colored background.

Melissa Ballantyne
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