

# PIRSA

## Pastoral Lands Bill 2020

Explanatory Guide



# Pastoral Lands Bill 2020 – Explanatory Guide

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The Pastoral Lands Bill is proposed to replace the existing *Pastoral Land Management and Conservation Act 1989* (PLMC Act). This Explanatory Guide has been developed to provide further background to the development of the Bill and its contents. It should be read in-conjunction with the Bill.

Why this is called a Bill not an Act?. Until a piece of legislation is passed through Parliament, it's referred to as a Bill. Therefore you will see both terms used throughout this guide where referring to the existing PLMC Act and the proposed Bill.

Covering the same jurisdiction as the existing PLMC Act, the Pastoral Lands Bill applies to Crown land that is dedicated as pastoral leases in South Australia. Comprised of 323 pastoral leases, this land occupies over 40% of the State.

The Bill outlines the legislative framework, or 'rules' for the administration and management of those pastoral leases.

This guide has been designed provide information on:

1. Background to the development of the policies in the Bill;
2. Answers to 'frequently asked questions';
3. Explanation of the Bills content.

For further information or to make comment on the Bill please visit [www.yourSAy.sa.gov.au](http://www.yourSAy.sa.gov.au) or [www.pir.sa.gov.au/pastoralactreview](http://www.pir.sa.gov.au/pastoralactreview)

## Background to the development of policies in the Bill

During 2019, a Discussion Paper was released seeking feedback on the current and future operation of the existing PLMC Act. The outcomes indicated that respondents want to see ecologically sustainable systems; a financially viable pastoral industry; opportunities to diversify businesses through alternative landuses; and to maintain a system of public access to these unique landscapes. This feedback highlighted the need to modernise the legislation so that it could meet the needs of current and future users of the pastoral lands.

That feedback was used to inform the below policy positions underpinning the Bill:

- Focus on supporting economic growth and development of the pastoral industry.
- Pastoralism will remain primary focus and use of the land, with lessees having a duty to proactively manage the land for pastoral purposes.
- Pastoral Board will remain with up to seven members selected from a nominations. Four must be lessees.
- Extend lease lengths up to 100 year leases - Still subject to conditions and Native Title
- Any alternate land use can be approved where appropriate. The operation of alternative landuses can be set by policy.
- Objects of the Act allow for leases to be used for other purposes to support the pastoral industry
- Rights of Aboriginal persons have been retained.
- Assessing the capacity of land, which means its ability to support the natural ecology and biodiversity of the land without intervention, so that it can continue to support pastoral purposes– is the underpinning principle of the Act.

- More frequent assessments, required every 10 years, but using best technology.
- Public access routes will remain but will be more clearly geographically defined.
- Lessees able to be held to account for their impacts on neighbouring non-pastoral land (such as APY Lands other Crown Land).
- Sublessees able to be held accountable to same level as lessees for non-compliance.
- Stronger penalties and broader compliance tools for misuse of land
- The Minister for the Pastoral Lands Act will need to be consulted before any rights are granted under another Act over a pastoral lease.

## Answers to frequently asked questions

As the Bill introduces new concepts and removes some outdated approaches, understandably people have questions about how this will affect them, with the most commonly asked questions and answers provided below.

### When will the new Act commence?

Firstly it depends on how long it may take to pass the Bill through Parliament. Following this, there is a grace period of up to two years before a new Act must then come into operation. This allows time to ensure that all the new procedures, policies and systems can be established and fully operational. There has not yet been a 'go live' date set, but the intent will be to get that in place as soon as possible once the Act passes Parliament.

### What happens to my current lease?

This will be rolled over into a new lease under the new Act. There will be a five year period for an assessment to occur for all new leases and any lease conditions that are not consistent with the new Act will also be reviewed and amended where required with the lessee within the first two years of the Act being operational.

### What will be the term of a pastoral lease?

Leases where appropriate may be increased from 42 years to 100 years, but can be issued for shorter terms where the lessee is non-compliant with the Act. Section 37 refers to how lease terms can be determined. The extension process will take into consideration existing Native Title rights when determining the length of the lease term.

### Why is there no longer a Stock Maximum?

Feedback has shown that stock maximums can create an artificial barrier to maximising opportunities to graze higher numbers of stock during favourable seasonal conditions. Lessees are best placed to determine what stocking rates are appropriate based on the carrying capacity of the land, and these determinations should be happening consistently rather than relying on a static 'stock maximum' number to guide carrying capacity. For lessees that see the opportunity to overgraze due to no limiting number of stock that can be carried on the lease, new monitoring and assessment approaches will be able to

rapidly identify this inappropriate land use and there are heavy penalties that can be applied for not maintaining land condition, including lease cancellation.

### **What 'alternative' land uses will be allowed?**

Permitted and non-permitted land uses haven't been strictly defined, rather each case will be assessed on its own merits. There will likely be a future policy or guideline developed to guide lessees and an application form outlining what information will be required. Considerations 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. The assessment process will also take into consideration existing Native Title rights and the potential impact of any alternative land use.

### **What happens if I have outstanding payments owing on my lease when the new Act commences?**

Any unpaid debts owing on existing leases should where possible be paid before the leases transition across, but if required any debts can be carried across onto the new leases under the new Act.

### **How will pastoral lease rents be determined?**

The process to determine the rent payable remains the same as in the current Act, where the Valuer General will assess the unimproved land value and take into consideration matters as required under the Valuation of Land Act 1971. The Valuer General will need to undertake these valuations at least once every 5 years. The Pastoral Board will continue to send out pastoral rent invoices each year. Rent will continue to be payable in arrears.

### **What happened to the 'stock proof fencing' lease condition and maintaining all existing infrastructure?**

The new lease conditions have been broadened to require lessees to maintain infrastructure that is adequate for their operations. So this means if you are running dorpers, your style of fencing will be different than that of a lessee with merinos. This broadening of terms also means that a lessee does not need to maintain all infrastructure forevermore. As in some instances, where a new land use is introduced on part of a lease, previously required infrastructure may no longer be required. Where a lessee is not maintaining adequate infrastructure and this creates impacts to neighbours as a result, they can be held liable for these impacts as part of their lease conditions.

### **How will land condition assessments occur?**

Land condition assessments will be undertaken using remotely sensed data that is analysed against various climatic data to provide a score of land condition. This data will be analysed by a person with experience in arid and semi-arid rangeland land systems to provide an analysis of the land condition for each lease. Those leases indicating unacceptable land condition, or at risk, will be inspected in person. This allows leases who are managing land condition well to continue to do so without the need for field assessments, and staff will be able to focus their effort on leases where land condition requires some additional monitoring and management.

# Explanation of the Bills content

Reading and interpreting legislation can be confusing, as it has a unique structure and the terms used can have very specific meanings. To explain the Bills structure, a simple guide is provided below to help navigate the document. In regards to the terms used throughout the Bill, the main terms are outlined in the front of the Bill, providing a definition as to their meaning. Most other terms should be read as having the same meaning as they would in any other context, and if in doubt, referring to the dictionary definition is a reliable guide.

When reading the Bill, it is structured as follows:

## **Page 1 – 3**

- Title and year of making
- Summary of Bill/Act purpose
- Table of contents

## **Page 4 - 6**

- Short title – name by which the Bill/Act will be referred to
- Commencement – date at which it comes into effect
- Simplified outline – a statement regarding the intent of the Bill/Act
- Interpretation – provides definitions of terms used

## **Page 6 onwards and the subsequent sections (Body of Legislation)**

- Body of the Bill/Act is divided into a standard hierarchy - Parts, Divisions and Sections
- Parts are numbered consecutively from 1, and within each Part, Divisions are numbered consecutively from 1. *Similar to a textbook, parts can be considered like chapters and divisions as subchapters. Sections can be considered as individual statements/directions but their application needs to be considered against the context of the entire Bill and other related sections.*
- Within the Bill /Act as a whole, sections are numbered consecutively from 1

## **At the End (page 43 onwards)**

- Schedules – in this Bill the schedule outlines the transitional provisions to bring in the new Act and related amendments to other Acts.

This Guide also provides an explanation for each section within the Bill, detailing its intent and what it means in layman's terms. It does not go into the detail of how each section will be administered, that detail will be provided once the Act comes into operation.

## **Part 1**

1. Short title: This outlines the name of the future Act.
2. Commencement: Outlines when it is planned to come into effect.
3. Simplified outline: Provides a summary of its intent.
4. Interpretation: Provides a glossary of common terms used in the Bill and their specific meaning.

## **Part 2 - Objects and duties**

### **5. Objects**

These Objects are the underlying principles of the Bill. The Objects have predominantly the same intent as those in the previous Act, and have been developed using community feedback to reflect the contemporary management and use of the pastoral rangelands. They maintain a focus on the utilisation of the land for pastoral purposes; underpinned by the need to maintain the capacity of the land. The term 'capacity' refers to the ability of the land to maintain its natural ecological functions, which is the same as intent of 'managing the land so that its renewable resources and yield are sustained' in the previous Act.

The two main changes are the addition of an Object that expressly allows the land to be used for alternative (non-pastoral) uses, where that use supports the economic sustainability of pastoral operations. This creates opportunities for business diversification; and allows lessees to spell the lease where required and allow those other purposes help support the overall viability of the pastoral lease. There has also been one Object removed, the operation of windfarms. As this activity is now captured as an alternative landuse.

### **6. Duties of Minister and Board**

The duties of the Minister and Board, when administering the Act, now expressly state the need to undertake compliance where good land management is not occurring. This was based on community feedback. The other duties include administering the Act in a way that seeks to further its Objects; and to have regard to the terms of ILUAs in administering the Act.

### **7. General duty of pastoral lessees**

The duty of lessees has been updated to reflect the desire that the pastoral estate should be managed proactively for pastoral purposes (noting the ability for diversification). And a new inclusion to ensure that lessees must prevent negative impacts to neighbours from their operations. This maintains the ability for a lessee to make their own day to day management decisions, but they must not allow those decisions to detrimentally impact on their neighbours. Lessees must also manage the land sustainably and endeavour to improve the capacity of the land.

### **8. Pastoral land not to be freeholded**

This continues as per the current Act, pastoral leases cannot be freeholded and will be retained as Crown Land to be used for pastoral purposes.

## **Part 3 - Administration**

### *Division 1 - The Minister*

## 9. Power of the Minister to delegate

This section retains the ability for the Minister to delegate his decisions. This usually occurs where there is some special expertise required to inform and make the decision, or the decision is predominately administrative and is more efficiently done by the department (or other delegate) under delegation. This Division also retains the Minister's ability to appoint Authorised Officers. Authorised Officers are provided specific powers under the Act to support its operation. Those powers are outlined in Section 39 and are largely used to support compliance activities.

A new addition is the express ability to develop policies and guidelines. This means that any policies or guidelines developed now have a legal status under the Act and can be enforced. For example, the Minister may choose to develop a policy on boundary fencing, which if not complied with, will allow further compliance action to be taken.

Another addition includes the Minister is to be notified of rights proposed to be granted under other Acts. As there are many other Acts that operate over the pastoral estate, this is intended to ensure alignment of decisions made under those Acts against the Pastoral Lands Act. Therefore before a right under another Act can be granted, the Minister must be notified so that they may highlight any issues with the operation of the Pastoral Lands Act.

## *Division 2 – The Board*

### 13. Pastoral Board

There have been a number of changes to the operation and membership of the Board. This has been driven by a desire to have greater transparency in the Board's operations and to ensure the membership has the relevant technical expertise to administer the Act; and knowledge of the pastoral industry.

The future Board must have 4 of its 7 members drawn from existing pastoral lessees. The Minister must select from nominations provided by the Nomination Committee. Comprised of Livestock SA, the South Australian Arid Lands Landscape Board, and the Department of Primary Industries and Regions. The Board is skills based, with knowledge, qualifications or experience in one or more of the following areas – operational management of pastoral leases, natural resource management/conservation, governance, financial management, native title and cultural connections of Aboriginal people.

Members are not there representing any particular organisation, they are there to provide their expertise to support the Board in administering their powers under the Act.

### 14. Conditions of office

Member's terms will be for 5 years and can be reappointed once that term expires. The Minister can remove a member from the Board; and if a position is vacant, that position must be filled. Board Members are entitled to receive allowances and expenses (as determined by the Minister) associated with undertaking their duties.

### 15. Functions of Board

The functions of the Board remain with the same intent. Providing advice to the Minister, such as informing the development of policies; and to administer their functions as outlined in the Bill. They may also be asked to perform any other functions as assigned by the Minister. The Board is subject to the direction of the Minister in carrying out its functions.

## 16. Meetings

Of note, in future the Board must publish a record of each meeting on a website, increasing the transparency of Board business. The Board must also hold 2 public meetings in the pastoral estate each year. The Board will be chaired by the Presiding Member, or if they are not present, the Board may choose another member to preside over the meeting. The Board's quorum is 4 members and no business can occur without a quorum. Decisions are made by a voting system, with each member having 1 vote and decisions made by the majority vote. The Presiding Member has the casting vote if the votes are equal. Meetings can occur in person, via phone or other electronic means. The Board may determine how it wishes to conduct meeting proceedings.

### *Division 3 – The Fund*

## 17. Pastoral Lands Fund

The fund established under the current PLMC Act, continues and is now referred to as the Pastoral Lands Fund. The operation of the Fund has been expanded to allow it to be used for a greater range of purposes that further the Objects of the Act; and will continue to fund the administration of the Act. This could include research and development projects, operation of trial sites, developing publications etc. The opportunities are no longer defined by specific uses as in the current Act. Monies that go into the fund include any rent, fees, fines, money as directed by Parliament or the Treasurer, income from investing the Fund, or money paid into the Fund as required by other Acts.

### *Division 4 – The Pastoral Register*

## 18. Pastoral Register

This is a new section that allows for a one stop shop for all pertinent information related to each pastoral lease. The details of what will be in the Register will be outlined in the regulations, but will likely include information such as the lessee's name/s, contact details, same for any sublessees, how many stock were carried on the lease each year, any conditions attached to the lease (such as approved non pastoral uses), current compliance action underway, and approvals granted under other Acts over the lease (such bores and water licences). The purpose of the Register is to ensure that the Minister, Board and Department have access to key information about each lease when making decisions about its administration. The Register will be publicly available, but importantly, the Minister can determine which information will remain confidential, and not for public distribution. Lessees will be required to provide the required information to the Minister each year. If the information is not provided a fine of \$500 can be issued, or further penalties of up to \$10,000 can be applied if necessary. The register will also remove the need to do an annual Stock Return, with this information captured under reporting for the Register.

## **Part 4 – Pastoral leases**

## 19. Grant of pastoral leases

This section allows the Minister to grant a pastoral lease over Crown Land, where there has been an assessment of land under section 33 and the Board is satisfied the land can be used for pastoral purposes. The intent is to prevent a pastoral lease being granted over land where it cannot support the grazing of livestock. This replicates the intent in the previous Act. Granting a lease provides the person with an interest over that lease where they can occupy and use it as per any conditions of the lease. Section 22 deals with lease conditions. Where the Minister is proposing to grant a lease over Crown Land, they must undertake a public auction, public tender or another form of competitive process to make it publically available for issue, except if there are special circumstances where it should be granted to a specific person.

## 20. Execution of pastoral leases

This requires that where a lease document is sent to a prospective lessee from the Minister, the documentation must be signed and any associated fees paid within 30 days, or the Minister may decline to allow that lease to be granted. This replicates the intent in the previous Act.

## 21. Term of pastoral leases

Leases may be granted for a term of 100 years, which is significantly more than the 42 years under the current Act. This is a direct result of consultation feedback where lessees wanted greater certainty of lease terms to allow for long term investment decisions. Leases will continue to be 'rolling' leases, where the term is topped up following an assessment. The extension process will take into consideration existing Native Title rights when determining the length of the lease term. Section 37 deals with the extension of lease terms process.

## 22. Conditions of pastoral lease

The intent behind the current conditions of pastoral leases is carried across into the Bill, including the flexibility to set specific conditions for a lease. Lessee must maintain the capacity of the land, must pay all rent, rates and taxes, must not obstruct any person exercising their (where lawful) right to access the land, and to comply with all other Acts that apply to pastoral land. There has been the inclusion that lessees must proactively use the land for pastoral purposes, and the requirement to not exceed the leases stock maximum has been removed. This is based on feedback that a stock maximum can create an unnecessary limitation on potential livestock production where reasonable conditions are favourable. The removal of the stock maximum allows lessees to manage the numbers of stock on the land based on its carrying capacity, which varies over time. However, if the Board requires information regarding the number of livestock on a pastoral lease as part of a compliance activity, it can require the lessee to provide a statement of stock levels, or require the lessee to undertake a muster to allow for a livestock count to occur. This detail is outlined in section 43.

To run stock other than sheep and cattle continues to require approval by the Board, and the Minister must approve the use of land for any other non-pastoral purpose. Section 24 deals with granting of alternative land uses.

Lessees must also maintain adequate infrastructure required to undertake any approved purposes on the lease. This replaces the previous requirements to maintain stock-proof fencing and to maintain infrastructure, as a less directive and more 'fit for purpose' clause.

The rights and ownership associated with minerals, petroleum, underground water and timber (vegetation) found on pastoral leases remain with the Crown; and the Commissioner of Highways retains the right to establish public roads.

The Pastoral Board will determine the form of a pastoral lease under the future Act.

The terms of a pastoral lease can only be varied by agreement between the lessee and the Pastoral Board. Non-compliance with lease conditions can attract significant penalties, up to \$50,000 for a person or \$100,000 for a corporation.

## 23. Rent

The Valuer General will continue to determine pastoral lease rent in accordance with the Valuation of Land Act 1971 and taking into consideration the matters outlined in the Bill, with the Minister having the ability to reduce or waive rent where appropriate, such as in the case of financial hardship. The Board will continue to issue rent invoices.

## 24. Alternative landuses

This section specifically allows the Board to approve the grazing of another species, other than sheep or cattle, and allow for the land to be used for non-pastoral uses. The Board must receive the consent of those with a registered interest over the lease before approving an alternative use and must consider the terms of any relevant ILUA. Approvals for alternative uses can be granted with conditions as determined by the Board, and the approval will be attached as a 'schedule' to the lease. The conditions in the schedule will be considered to have the same status as any other lease condition and able to be enforced. This section explicitly allows for non-pastoral uses on a pastoral lease, creating opportunities for business diversification. The Objects (section 5) of the Act also allow alternative uses of the land to support the economic sustainability of the pastoral industry.

These changes have been driven by feedback received during the review of the existing Pastoral Act, where there was uncertainty about what could be considered an alternative landuse but not detract from the pastoral purpose. Further guidance on the administration of non-pastoral uses will likely be provided through a policy or guideline under the new Act.

#### 25. Dealing with pastoral leases

Transferring any rights held by a lessee under a pastoral lease (such as establishing a sublease, registering a mortgage or transferring a lease) requires the consent of the Minister under the current Act and this will remain. In addition this has been expanded to include the transfer of water rights. This has been based on feedback regarding the unbundling of water rights in the Far North Prescribed Wells Area where concerns were raised about leases becoming 'stranded' from sufficient water allocations to undertake their pastoral and ancillary operations.

A further addition is the ability for prospective lessees to seek an indication from the Minister whether they are likely to consent to a request to transfer the rights specified in section 25. This has been introduced to assist prospective buyers and sublessees in particular so that they can make decisions prior to entering into contracts regarding a lease, with a level of confidence as to the likely decision outcome. Examples could include where a lessee has current compliance action underway, or has a significant debt owing to the Crown, which would likely be relevant considerations for any person seeking to register an interest over the lease, as to whether it's appropriate to enter into any further contractual arrangements. The regulations will outline any circumstances where a lessee may be required to seek this preliminary advice.

Before a decision is made about any lease that is located within the Woomera Prohibited Area, the Pastoral Act Minister must first consult with the Minister responsible for the Commonwealth Defence Act 1903. This is to ensure that any transfer of rights are not undertaken where they may not be in the national interest. This is a new addition.

This section also introduces the ability to hold sublessees and lessees jointly accountable for any liabilities owing; and for any compliance action required to enforce lease conditions. Previously lessees have been held solely accountable for any non-compliance issues under the Act, whereas the new Act will now share this responsibility. Providing greater clarity to both lessees and sublessees regarding who is liable when compliance action is required.

As in the current Act, if an agreement to deal with a pastoral lease, as per this section, does not obtain the consent of the Minister within 12 months of entering into any agreement, the agreement will expire.

#### 26. Consent to certain share transfers in pastoral company

This section replicates the existing Act, allowing for shares in a company, taken to be the lessee, to be transferred. The same conditions as section 25 apply in terms of seeking Ministerial consent.

#### 27. Alteration of boundaries

This continues from the existing Act. Where there may be a discrepancy between the cadastral (surveyed) boundary and the actual on ground boundary (fence line) this section allows for the two boundaries to be realigned by the Minister (typically initiated at the request of a lessee). Upon altering the boundary, the rent may be varied if there has been a substantial change to the lease area as a result; and all registered interests and caveats continue to cover the altered lease area.

#### 28. Variation of land subject to a pastoral lease

This continues from the existing Act allowing for land to be excised from a lease and added to another adjoining lease. This section is also used where a lessee may wish to merge of multiple adjoining leases.

#### 29. Resumption of land

This continues from the existing Act allowing for all or part of a pastoral lease to be resumed by the Minister. Six months' notice must be given to those who will be effected. Once the resumption takes effect, that portion of the lease in question is then cancelled and all encumbrances and claims cease to exist (e.g.: all easements would be removed). If only part of a lease is resumed, the rest of the pastoral lease and the lease conditions (which may be varied if required) remain. If a lessee is unhappy with the conditions applied to the remaining lease they can apply to the Tribunal for a review of the decision. For any land resumed, the lessee is entitled to compensation.

#### 30. Compensation

Compensation is directly linked with any resumption of a lease under section 29 and the value of compensation payable is based on the market value of the lease. The figure is determined either by agreement with the Minister and the lessee; or if they cannot agree, by the Environment, Resources and Development Court.

#### 31. Vacation of land

This section merges the provisions of sections 33 and 34 in the current Act. It allows the Minister to order the vacating lessee to remove any property, or recoup costs of undertaking the removal if the lessee fails to do so themselves. This section also allows for the abandoned lease to be cancelled.

#### 32. Cancellation of a pastoral lease

The Board retains the ability as per the current Act to cancel a lease, where there has been a breach of lease conditions; and the lessee, after opportunity to do so, has not remedied the issue. Or cancelling the lease is necessary to prevent or stop further damage to the condition of the land. The Board has the ability to order that the lessee is compensated for any loss suffered from the cancellation; or require the lessee or Crown to compensate any parties with a registrable interest over the lease for loss suffered. The cancellation results in the land being freed from all encumbrances and claims and it may then be reissued as a pastoral lease if appropriate.

### **Part 5 – Assessment of Land Capacity**

#### 33. Assessment of land prior to grant of pastoral lease

This section requires that the Minister cannot grant a new pastoral lease over Crown land, unless an assessment has occurred within the preceding 10 years. This also needs to be read in conjunction with section 19 which requires that the Board is satisfied that the land is suitable to be used for pastoral purposes before the Minister can grant a lease.

#### 34. Assessment of land after grant of pastoral lease

The intent to assess land condition remains the same from the existing Act but now requires assessments to be completed at least once every 10 years.

#### 35. Manner in which assessments are to be carried out

Assessments will continue to be undertaken by the Board but will be conducted using data collected remotely using the best available technology, supported by in-person field visits where required. The intent is to reduce the reliance on in-person assessments which are difficult to resource and are often geographically limited as to how much of lease they can physically assess. Lessees will continue to be asked to provide updated data to support the planning for assessments, such as the instalment of new waterpoints or fence lines, and this has been reflected in the new Bill. Lessees will continue to receive 28 days' notice of the intent to undertake an in-person assessment visit.

#### 36. Reports following as assessment

The Board will now have 3 months (instead of 12) to forward a copy of the assessment report; and a written report outlining any action that may be proposed to be taken to address or prevent land degradation, to both the lessee and also the Minister (this is new).

#### 37. Extension of term of pastoral leases

As per the current Act, lease term extensions are tied to land assessments. Following the adoption of the report as outlined in section 36, depending on the outcomes of the review, the Board can a) extend the lease term, b) impose conditions, or c) may refuse to extend the lease. In determining what course of action to take, the Board may consider matters such as whether there been a breach of lease conditions; or a breach of Ministerial policy or guideline relating to the pastoral lease; or the lessee has breached their duty under section 7. Lease terms will be issued at a minimum of 42 years and a maximum of up to 100 years. The process to make the decision about whether the Board extends, changes conditions or refuses to extend a lease will likely be outlined in a policy document.

When extending the lease term, the Board will need to consider whether the *Native Title Act 1993* may apply and ensure there are no infringements on Native Title rights under that Act. To better manage any issues with the lease, the Board, with the consent of the lessee, can impose new conditions on the pastoral lease and extend the term for up to 100 years; or refuse to extend the term of the lease. This approach is new and designed to ensure that good pastoral land management can be rewarded by providing long term leases. However for lessees that don't manage the land appropriately or abide by lease conditions, there is the option to discourage this behaviour through limiting lease tenure until the issue can be resolved. To ensure that all registerable interests attached to a lease are aware of a decision to not extend, or extend for a shorter period, notice must be given to these parties.

#### 38. Reference Areas

The intent of the current Act remains, allowing for the establishment of Reference Areas to allow for points reference of different land systems and vegetation type. Reference Areas are to be non-grazed, therefore allowing for comparison of climatic impacts to vegetation and soil, when compared to other grazed areas. These areas provide important reference points when validating remotely sourced data used to undertake land assessments. The Board has the ability to establish Reference Areas on a pastoral lease, with the Minister being responsible for its care, control and management. The Minister may at their expense, erect fencing or undertake other measures to exclude both livestock and other grazing animals from the area. A lease subject to a Reference Area is not eligible for compensation, but may have the rent payable under the lease reviewed.

## **PART 6 – Enforcement and Compliance**

This part has some significant changes to the current Act, bolstering the ability to undertake effective compliance.

### **39. Powers of authorised officers**

As per the current Act, authorised officers may be appointed by the Minister, where they may undertake a range of activities to assist with the administration, operation or enforcement of the Act. The powers have been updated to reflect other contemporary pieces of legislation, such as the *Landscapes South Australia Act 2019*, acknowledging the varied types of data and evidence required to support the expanded compliance tools contained in the new Bill. Authorised officers should give reasonable notice of their intent to enter a pastoral lease unless it's not practical to do so, or they need to act immediately to deal with a breach of the Act. The regulations may further specify under what circumstances items may be seized and how they are dealt with. Interfering with the work of an authorised officer can attract a penalty of \$10,000 as outlined in section 41.

### **40. Misuse of pastoral land**

This section deals specifically with members of the public where they do not lawfully obtain entry to pastoral land or misuse the land. This section has been directly influenced by feedback from lessees concerned about the lack of options to control inappropriate use of the land by members of the public. For a member of the public who is found to be guilty of an offence outlined in this section (such as polluting water, erecting structures, hunting, or travelling across the land) they are liable for a fine of \$50,000 which increases to \$100,000 for corporate bodies and have the burden of proof, meaning they must prove they had lawful authority to undertake the activity in question in court to avoid the fine.

### **41. Hindering etc. persons engaged in the administration of this Act**

To ensure the Minister, the Pastoral Board and any departmental staff or authorised officers involved in administering the Act are able to do so without interference, this section in the current Act has been updated to reflect contemporary language and impose penalties up to \$10,000.

### **42. Compliance notices**

The intent of Part 5 in the current Act, which allows for property plans and destock notices, has been carried over and combined into a single tool, the compliance notice that can be tailored for any purpose. For example a notice may require a lessee to destock a specified area, or to undertake fencing to control stock, or to discontinue an activity. These notices can be applied for specified periods or until further notice in the case where remedial action may take a prolonged period of time with ongoing monitoring required to determine its success. Failure to comply with a notice can attract fines up to \$50,000 for an individual or \$100,000 for a corporation. The penalties have been increased based on feedback received during the review to actively discourage misuse of pastoral land and hold non-compliant lessees accountable.

### **43. Verification of livestock levels**

This intent is carried over from the existing Act where the Board may require a lessee to provide a declaration of the number of livestock on hand, or require a muster to allow the Ministers representative to count the stock. Failure to comply can attract a penalty of up to \$10,000.

## **PART 7 – Access to pastoral land**

### *Division 1 – Indigenous Land Use Agreements*

#### **44. Indigenous land use agreement binding on lessees**

This carries over from the current Act, binding any current and future lessees to any Indigenous Land Use Agreement (ILUA) in place over a pastoral lease. It also allows lessees to develop an ILUA with the relevant native title group for that area. An ILUA outlines the rules of access and use for all parties related to the pastoral lease. It also provides pathways to make decisions about access to and use of land that are not in line with the current ILUA conditions and a process to resolve disputes.

#### 45. Immunity from liability

No person who is a party to the ILUA carries any civil liability for injury, damage or loss caused to another party to the ILUA; or to anyone that is unlawfully on the pastoral lease. This means you cannot be held responsible for payment of damages or other court-enforcement in a lawsuit, as a result of implementing the terms of the ILUA.

#### 46. ILUA to be endorsed on lease

All ILUAs will be registered on the relevant pastoral lease title to ensure that all current and future lessees are aware of its existence and can make themselves aware its terms.

### *Division 2 – Public Access*

#### 47. Trespassers on pastoral land the subject of an ILUA

This section is to protect the integrity of an ILUA where a public person trespasses onto a lease. The person is subject to a penalty of up to \$2,500 or imprisonment for 6 months. To ensure that action can be taken whilst the trespass offence is occurring, the persons who are authorised to take action under this section include the lessee, members of the native title group, an employee of the lessee, or a person acting on the written authority of the native title group. Authorised Officers under this Act can also take action under this section as required.

#### 48. Rights of Aboriginal persons

To recognise the rights of Aboriginal people, as per the existing Act, this section allows an Aboriginal person to enter, travel across or stay on a pastoral lease where they are undertaking traditional pursuits. However the person may not camp within 1 km of a house or outbuildings, or within 500 meters of a constructed watering point. This section is also to be read in conjunction with any ILUA in place which may grant additional or remove the rights allowed for under this section.

#### 49. Establishment of public access routes

Public Access Routes, or PARs, remain as per the current Act and will now be more clearly defined as to their position on a lease. Under the current Act, where a PAR deviates from the original route, this becomes the new PAR. Under the Bill it is proposed that PARs will have a geographically defined corridor, allowing the track to meander within that boundary, and any movement outside of that boundary will be considered to be trespassing onto a lease, if prior approval has not been sought. Members of the public can continue to travel on PARs without requiring any permissions to do so. Due to safety concerns camping will not be permitted on a PAR, but people may camp temporarily next to a PAR with the consent of a lessee. The Minister will remain responsible for the care control and maintenance of PARs and the Board will remain responsible for the establishment and closure, including temporary closures, of PARs. Lessees are able to use PARs for grazing or droving livestock as necessary.

#### 50. Right to travel across and camp on pastoral land

The right of the public to seek permission to travel across (not on a PAR) or camp on a pastoral lease has been retained, with permission to be granted in accordance with the terms of any ILUA in place. A lessee may refuse consent due to public safety concerns, or for the purposes of managing

livestock, undertaking rehabilitative works or for other sufficient reasons. If consent is refused, the person may seek the permission of the Minister who must take into consideration the matters outlined in section 50 when making his decision. If a person who has been given permission and direction as to how to travel or where to camp doesn't comply with those directions, they are liable for a penalty of \$1,250. If the person enters the lease without permission they are also subject to the trespass penalties as outlined in section 47.

#### 51. Public access not to be obstructed

This continues as in the current Act, where anyone that obstructs a PAR is subject to a penalty of \$1,250. If the PAR intersects with a fence line, a gate must provide access to the PAR and it must remain unlocked.

### *Division 3 – Travelling livestock*

#### 52. Travelling with livestock

As in the current Act, the right for a member of the public or another lessee to travel with livestock across pastoral land remains. This includes the droving of livestock and the use of station tracks (non-public roads) to transport livestock. The person must first seek consent within 28 days before the travel date, and the lessee must not unreasonably refuse consent. If consent is refused, the person may then seek the consent of the Minister. Any approvals to travel must be consistent with the terms of any ILUA in place. Failure to comply with any approval conditions will attract a penalty of \$1,250. However, if a person does not have permission to travel across the lease, they are subject to section 40 where penalties can range from \$50,000 for an individual, to \$100,000 for a corporation.

### *Division 4 – Access to water*

#### 53. Right to take water

Where a person has been granted permission under Part 7 (sections 44 – 53) to enter and travel across pastoral land, that person may take water from any source of water (except a rainwater tank) for their domestic or personal needs; and if they are travelling with livestock, allow them to access water subject to any directions given by the lessee. A person with a mining tenement may also take reasonable quantities of water from the same sources as above, for mining, personal or domestic purposes but not to the point where it affects the lessee's needs. The use of water by a mining tenement holder is also liable for compensation that will be outlined in the regulations. If there is anything different in terms of water use under the new *Landscape South Australia Act 2019*, that Act takes precedence.

## **Part 8 – Reviews**

### *Division 1 – Reviews by Tribunal*

#### 54. Jurisdiction of Tribunal

To ensure lessees are provided a right of review for decisions that may adversely affect them, the role of the Tribunal is maintained in the Bill. Matters that can be referred to the Tribunal include not consenting to a transfer, mortgage, sublease; issuing a notice to later a lease boundary without the consent of the lessee; varying the conditions of a pastoral lease without the consent of a lessee; cancelling a pastoral lease; not extending a pastoral lease; any enforcement/compliance decisions under Part 6; and any decisions relating to PARs. An application for review of those decisions must occur within 3 months of the lessee being notified of the decision. The Tribunal has the right to

establish a panel of assessors (with relevant expertise in the matter) to assist them in reviewing the decision. This will not include people involved in the administration of the Pastoral Lands Act.

#### 55. Operation of certain decisions pending review

This section allows for decisions that have been made to continue while a review under section 55 is underway, but if the decision relates to the cancellation of a lease or the imposition of a fine, these decisions cannot be implemented until either the 3 month appeal period has passed; or the Tribunal has made a decision.

#### 56. Related provisions

This section prevents parties who are not directly concerned with the matter participating in the Tribunal proceedings. It also allows the Tribunal to direct the parties subject to the proceedings attend a compulsory conference to seek to resolve the matter.

### *Division 2 – Review of valuation and review by Tribunal*

#### 57. Valuations – right of review

As per the current Act, lessees will retain the ability to review their pastoral lease rental valuation. To streamline the process, lessees can now apply directly to the Minister for a review or to the Tribunal. Previously lessees needed to request a review by the Valuer General, whereas the Minister who has a greater context of the operation of that lease and the overall pastoral estate, can now consider reviews. The Minister may seek advice from the Valuer General to inform their decision if necessary. If a lessee or the Valuer General is not satisfied with the decision of a land valuer assisting with the Minister's review, they may within 1 month of receiving the decision apply to the Tribunal for a review.

### **Part 9 – Miscellaneous**

#### 58. Recovery of native title compensation

This section allows the Crown to recover any costs associated with native title compensation resulting from any action or decision under this Act. Therefore if a lessee wished to undertake an activity that affected native title rights requiring compensation to be paid, and the Minister or Board grant those rights under this Act, the Crown can require the lessee to pay those compensation costs.

#### 59. Interaction with mining Acts etc.

As per the current Act, this section preserves the operation of the *Mining Act 1971* and the *Opal Mining Act 1995* and the *Petroleum Act 2000*, where nothing in the future Pastoral Lands Act can override these Acts or a tenement granted under any of these Acts.

#### 60. Exemption from stamp duty

As per the current Act, the exemption from stamp duty remains for payments for new leases and for the extension of lease terms.

#### 61. Certain debts are charges over leases

This allows the Minister to register any debts owing imposed under the Act (such as fines, rent owing etc.) on the lease title, and these debts take priority ranking over all other charges and mortgages (with the exception of charges owed to the Crown).

#### 62. Services of notices or other documents

As in the current Act, if a notice must be served under the Act, this section outlines the methods in which that can occur. Including handing it to the lessee, or an agent of the lessee, leaving it at the lessee's residence, sending via post, emailing it, attaching it to part of the land, or by another method outlined in regulations.

#### 63. Form of applications

This section allows for the Minister and Board to determine the form in which applications must be received and the information that must be contained when applying for a decision under the Act.

#### 64. Consent unreasonably withheld

This section provides the Minister the ability to make an overriding decision, where their decision requires the consent of a party other than the lessee (e.g. holder of an easement), but the third party has not consented and the basis to their decision to not consent it is deemed to be unreasonable. This provides the Minister to ability to override their refusal to consent and approve the decision where appropriate. For example section 25(9) related to surrendering a lease, requires all parties with a registerable interest (e.g. mortgage holder) to also consent, if they unreasonably withhold that consent, the Minister may still decide to accept the surrender.

#### 65. False or misleading information

If you lie or provide misleading information to the Minister or Board under the Act you are committing an offence and can be fined \$20,000.

#### 66. Criminal jurisdiction of ERD Court

This section defines that all offences under the new Pastoral Lands Act will be considered to be a criminal offence that will be dealt with by the Environment Resources and Development Court.

#### 67. Proceedings for offences

This section outlines who can take action to commence proceedings for offences under the Act. This includes the Minister, the Director of Public Prosecutions and a person acting under the authority of the Minister. Proceedings must be commenced within 5 years of the date of the alleged offence.

#### 68. General defence

This outlines what constitutes a defence for someone who has allegedly committed an offence under the Act. It states that if the defendant can prove the offence was not committed intentionally and wasn't as a result of not taking reasonable care to avoid the offence, this can be considered as a defence.

#### 69. Additional orders on conviction

In addition to any penalties that may be imposed, this allows the court to apply additional orders on a person convicted under the Act. Which can include requiring the person to take action (such as to fix the issue or to prevent further issues occurring) or can require the person pay the Crown an amount determined by the court to be equal to the financial benefit that would have been gained from the resulting activity. For example, if a lessee ran a goat feedlot without permission and was convicted, they could be expected to pay the Crown the money they would have received from the operation of that feedlot.

#### 70. Continuing offence

This section allows for penalties to continue to be applied to a person who is liable for an offence, for each day the person continues to contravene the requirements of the Act. Furthermore, if that person is then convicted of the offence and continues to contravene the Act, they are then subject to

further convictions and penalties for each day the offence continues. The court will determine if the person is liable for a continuing offence. This has been introduced based on feedback that stronger penalties are necessary to act as a strong deterrent and ensure compliance with the Act.

#### 71. Evidentiary provision

This section outlines what types of information can be considered as proven evidence in proceedings, unless the defendant can prove otherwise. This includes what documents can be accepted by a court related to providing evidence and include documents relating to ownership, use of land, maps, valuation certificates and authorisations. It outlines that if the offence involves the removal of native vegetation, the presumption is that the lessee undertook the clearance unless they prove otherwise. The use of devices by authorised officers to capture information that is used to allege a fact, will be accepted as fact unless otherwise provided. The use of a remotely sensed image used in proceedings, will be taken to be of a specified place at a specified time and date unless otherwise proven.

#### 72. Recovery of technical costs associated with contraventions

This allows the Minister to recover costs incurred when investigating an offence, where the person has been convicted. This can include taking and analysing samples, or conducting tests. The Minister must provide this evidence to the court for them to determine what the convicted person must pay.

#### 73. Regulations and fee notices

This provides for regulations to be made to assist with the operation of the Act. Regulations are used to specify additional information that is not within the Act itself, but provide further detail to outline how that section of the Act will be applied. There are existing regulations under the current Act containing information such as how compensation will be paid when water is taken for mining, what types of directions a lessee can give to a member of the public travelling on their lease and they outline what fees are payable for various applications for decision under the Act. These will be replaced when the new Act comes into force. Where a section of the Bill makes reference to the regulations, you can expect that a new regulation will be developed to provide additional detail to support the operation of the section. For example section 39(16) in the Bill refers to regulations providing detail as to the seizure of items and how they can then be dealt with.

## **Schedule 1 – Related amendments, repeals and transitional provisions etc.**

### **Part 1 – Related amendments**

#### Division 1 – Related amendment of *Crown Land Management Act 2009*

This outlines the proposed amendment to the *Crown Land Management Act 2009* to recognise that a cancelled pastoral lease is still considered to be land subject to a pastoral lease unless the Minister for the Pastoral Lands Act advises that the land has reverted to unalienated Crown land.

### **Part 2 – Repeal**

#### 2. Repeal of *Pastoral Land Management and Conservation Act 1989*

This creates the ability to cease operation of the current Pastoral Act so that it can be replaced with the new Act.

### **Part 3 – Transitional provisions etc.**

#### **3. Leases to continue**

This allows for all existing rights contained in pastoral leases to be carried over and recognised as leases under the new Pastoral Lands Act. It also sets a 2 year period for the Board to review all leases to ensure they are consistent with the requirements of the new Act and amend lease conditions accordingly as required (with the consent of the lessee). The Board must also within 5 years undertake an assessment of the land as outlined in Part 5. Part 3 also outlines that any minimum stocking rates on pastoral leases are considered to be invalid, and that any liabilities owing on a lease under the PLMC Act, continues in force under the new Act.

#### **4. Consent to continue**

To be explicit, this part confirms that any consents granted by the Minister under the PLMC Act are considered to be a consent granted by the Minister under the new Act, where those terms apply. The Minister may also vary or remove a consent, which could be applied where that previous consent is no longer considered to be aligned with the operation of the new Act.

#### **5. Reference Areas**

This creates the ability to recognise existing reference areas as continuing for that purpose under the new Act.

#### **6. Continuation of PARs**

This creates the ability to recognise existing PARs as continuing for that purpose under the new Act.

#### **7. Notices to continue**

Any notice issued under the current Act will continue as a notice under the relevant provision of the new Act. For example if a property plan under section 41 of the current Act was in place, this would transition across as a compliance notice under section 42 in the new Act.

#### **8. Transitional regulations**

This allows for future regulations to be developed that may be different to what is currently outlined in Schedule 1. For example when the new Act comes into effect, there may be previous decisions uncovered that are to be carried over as per Schedule 1 as lease conditions, but that should no longer be in operation and should cease to have effect. The new regulations will be able to outline any such changes.

