

PASTORAL LAND LEGISLATION AMENDMENT BILL 2017 SERIAL NO.

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR ENVIRONMENT AND NATURAL RESOURCES

EXPLANATORY STATEMENT

GENERAL OUTLINE

This Bill incorporates amendments to address shortfalls and technical irregularities in *Pastoral Land Act* and *Pastoral Land Regulations*.

The purpose of this Bill is to primarily implement a new methodology to set pastoral lease rents based on the capacity of the lease to support livestock (using estimated carrying capacity) and enable the grant of subleases for non-pastoral uses to further support diversification of the Northern Territory pastoral estate.

Other minor amendments modernise the Act.

The offences within the Bill have been updated to meet Part IIAA of the Criminal Code and while penalties have remained the same it is proposed to undertake a detailed evaluation of these when the whole Act is reviewed.

NOTES ON CLAUSES

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Pastoral Land Legislation Amendment Act 2017*.

Clause 2. Commencement

Provides for commencement of the Act on a day fixed by the Administrator by *Gazette* notice.

Clause 3. Act amended

Confirms this Act amends the *Pastoral Land Act*.

Clause 4. Section 3 amended

Amends section 3 by including new signpost definitions to direct the reader to each definition in a respective part or section, and include **animal equivalent** and **estimated carrying capacity** to be used in the new methodology to calculate pastoral rent; **sublease** and **sublessee** for use in registering subleases on the pastoral lease title; and amending dated terminology used within the existing legislation.

Clause 5 Sections 3A and 3B inserted

New section 3A inserted to further define the meaning of **estimated carrying capacity** and **animal equivalent** in detail.

New section 3B provides that Part IIAA of the Criminal Code applies to an offence against the Act. This is appropriate because this amendment introduces new offences. A note explains that Part IIAA of the Criminal Code concerns principles of responsibility, defences and burden of proof as well as other concepts relevant to offences.

Clause 6. Section 12 amended

This clause amends section 12 to omit “shall consist of” and replace with “consists of at least” five members on the Board. The Minister may appoint additional members, to have a larger core group of members from which the quorum of four can be drawn to mitigate the risk of a quorum not being available.

Clause 7. Section 22 replaced

Section 22 has been repealed and replaced with an updated offence and wording that is compliant with Part IIAA of the Criminal Code. The unauthorised disclosure of confidential information is a standard offence and the new section 22 has been drafted so that it is consistent with like offences across the statute book. The penalty has been

increased to 200 penalty units or imprisonment for 2 years so that it aligns with like offences across the statute book.

Clause 8. Part 4, Division 1AA inserted

New Division 1AA inserted, encompassing new sections 30A and 30B.

Section 30A inserts definitions for **sublease** and **sublessee**. These new definitions have been included to describe terminology and meanings within Part 4.

Section 30B inserts the definition of **Lease transaction** explaining what transactions need Ministerial consent and includes the provision that a body corporate needs to get consent if it is changing ownership, or the controlling interest of the body corporate changes. This is to ensure adequate control of the pastoral estate.

Clause 9. Section 35 amended

The section has been updated to ensure the existing offences and wording is compliant with Part IIAA of the Criminal Code.

The subsections have been updated with wording relevant to the insertion of lease transaction and to clarify the information required in a notice.

Clause 10. Section 38 amended

This section has been updated to modernise the wording used and to comply with the criminal responsibility provisions in Part IIAA of the Criminal Code. Proposed section 38(5) provides that it is an offence to interfere with the reserved rights of an Aboriginal person on a pastoral lease. The offence is a strict liability offence with a defence of reasonable excuse. Pursuant to the operation of section 43BU of the Criminal Code, if a defendant seeks to rely on having had a reasonable excuse, the defendant bears an evidentiary onus in relation to that matter.

Clause 11. Section 40 amended

This section has been updated to modernise the wording used and to comply with the criminal responsibility provisions in Part IIAA of the Criminal Code.

Clause 12. Sections 54 and 55 replaced

Sections 54 and 55 to be repealed and replaced to provide for the use of an Estimated Carrying Capacity (ECC) when calculating pastoral rent as a replacement for the current model of using Unimproved Capital Value of the land.

Proposed section 54 outlines the process for the determination and use of ECCs for pastoral land the subject of a pastoral lease, the maximum time period of 10 years for review of ECCs and the provision of written determination of the ECC to the pastoral lessee.

Proposed section 55 sets out the methodology for calculating pastoral lease rent. While the method for determining the baseline valuation of the pastoral estate is proposed to change, there is no change to the process used to calculate rents with the overall income generated to continue to be determined by Government. The new methodology for determining pastoral rent income is based on multiplying the assessed ECC (in animal equivalents or AE) of the lease by a dollar figure which has been termed the 'Pastoral Lease Rent Factor' such that:

$ECC (AE) \times Pastoral Lease Rent Factor (PLRF) = Pastoral Lease Rent$

The value of the PLRF (a dollar figure) will be declared by the Minister each year.

The ECC rent methodology will be introduced for the next financial year following passage of the amendments.

Clause 13. Section 56 amended

The proposed change to section 56 is a consequential amendment to bring the terminology regarding payment of rent in line with the terminology in proposed section 55 which outlines the methodology for charging pastoral rent.

Amendments to section 56(2) update the current time frame in which pastoral rent is to be paid, bringing the payment period in line with NT Government policy of 30 days.

Clause 14. Section 57 replaced

Section 57 has been repealed and replaced with updated wording to use a statutory interest rate from which to calculate interest accrued for late payment of rent as specified in proposed section 56. The provision may be applied if pastoral rent is not paid in a timely manner. The interest rate will be prescribed by regulation.

Clause 15. Part 4, Division 3 heading replaced

Division 3 heading updated to **Dealings with pastoral leases** and new Subdivision 1 heading **Surrender of lease** inserted to provide clarity and reflect amendments within Division 3.

Clause 16. Part 4, Division 3, Subdivision 2 heading inserted

New Subdivision 2 heading **Uneconomic areas of Crown land** inserted to provide clarity and reflect amendments within Division 3.

Clause 17. Part 4, Division 3, Subdivision 3 heading inserted

New Subdivision 3 heading **Exchange of lease** inserted for ease of reference and to reflect amendments within Division 3.

Clause 18. Section 66 amended

Section 66 updated to modernise wording to reflect contemporary drafting style.

Section 66(6) referred to the *Valuation of Land Act* which has been repealed in clause 12. Therefore the proposed amendment addresses how rent is calculated when the Minister approves the exchange of part of a pastoral lease.

Clause 19. Sections 67 and 68 replaced

Sections 67 and 68 are repealed and replaced to reflect contemporary drafting style and ensure compliance with the criminal responsibility provisions in Part IIAA of the Criminal Code.

Proposed section 67 has been drafted to ensure that Ministerial consent is obtained when a pastoral lease is being transferred by way of a majority share transfer. This closes a current loophole. The process of seeking consent to transfer under current section 68 is already established and is retained under proposed section 68.

The penalty for transferring a pastoral lease without the consent of the Minister is currently 40 penalty units. This penalty applies to individuals. Through the operation of section 38DB of the *Interpretation Act*, the current penalty applying to a body corporate is 200 penalty units. Proposed section 67 introduces a new penalty of 650 penalty units to be applied to bodies corporate to act as an adequate dispositive for not giving the Territory the opportunity to assess a proposed sale. The penalty for individuals remains unchanged.

Proposed section 68A has been drafted to ensure that sublease transactions as detailed in section 30B(1) are registered on the property title by the pastoral lessee. This section aligns to the current requirements for the transfers of whole leases to be registered on the title and formalises a policy position requiring subleases to be registered. Registering subleases on the title will provide security for financing projects on subleased land and attracting prospective investors to non-pastoral uses.

A new subdivision 5, for **Mortgages**, has also been included for ease of reference.

Clause 20. Section 70 amended

Section 70 updated to modernise wording to reflect contemporary drafting style.

Clause 21. Part 4, Division 3, Subdivision 6 heading inserted

A new subdivision 6, for **Abandonment of leases and vacation of land**, has also been included for ease of reference to sections 71 and 72.

Clause 22. Section 73 amended

Section 73 has been updated to modernise the wording used and to comply with the criminal responsibility provisions in Part IIAA of the Criminal Code. Proposed section 73(1A) provides that it is an offence for a pastoral lessee to fail to comply with the reasonable requirements of a written notice given under proposed section 73(1) regarding the control of declared feral animals. The offence is a strict liability offence with a defence of reasonable excuse. Pursuant to the operation of section 43BU of the Criminal Code, if a defendant seeks to rely on having had a reasonable excuse, the defendant bears an evidentiary onus in relation to that matter. The penalty remains unchanged from the current offence.

Clause 23. Section 74 amended

The offences in section 74 have been redrafted to reflect current drafting style and to comply with the criminal responsibility provisions in Part IIAA of the Criminal Code. The penalties remain unchanged.

Clause 24. Section 75 amended

Section 75 has been updated to modernise the wording used and to comply with the criminal responsibility provisions in Part IIAA of the Criminal Code. Section 75(2) provides that it is an offence for a person to remove, deface or otherwise damage a marker at a monitoring site. The offence is a strict liability offence with a defence of reasonable excuse. Pursuant to the operation of section 43BU of the Criminal Code, if a defendant seeks to rely on having had a reasonable excuse, the defendant bears an evidentiary onus in relation to that matter. The penalty remains unchanged from the current offence.

Clause 25. Section 80 replaced

Section 80 repealed and replaced to clarify the requirements of public access to pastoral land and waterways that are to be allowed, to modernise the wording used and to comply with the criminal responsibility provisions in Part IIAA of the Criminal Code

The offences in current section 80(3) and 80(4) of erecting a fence across an access route and failing to provide suitable access on a pastoral lease and keeping a gate unlocked, have been extended from applying only to the “pastoral lessee” to any “person”. Proposed sections 80(4) and 80(6) will enable the offences to apply to any person who accesses the pastoral lease including contractors and mining companies.

The penalties remain unchanged

Clause 26. Section 82 amended

Section 82 has been updated to modernise the wording used and to comply with the criminal responsibility provisions in Part IIAA of the Criminal Code. Section 82(2) provides that it is an offence for a pastoral lessee to not to comply with a direction from the Pastoral Land Board to revoke or amend a notice temporarily closing public access of an access route. The offence is a strict liability offence with a defence of reasonable excuse. Pursuant to the operation of section 43BU of the Criminal Code, if a defendant seeks to rely on having had a reasonable excuse, the defendant bears an evidentiary onus in relation to that matter. The penalty remains unchanged from the current offence.

Clause 27. Section 83 amended

Section 83 heading updated to **Closure for rehabilitation and conservation** making it clear what the section references.

Section 83 has been updated to modernise the wording used and to comply with the criminal responsibility provisions in Part IIAA of the Criminal Code. Section 83(3) provides that it is an offence for a person to fail to comply with a declaration made by the Pastoral Land Board restricting access to an area closed for rehabilitation. The offence is a strict liability offence with a defence of reasonable excuse. Pursuant to the operation of section 43BU of the Criminal Code, if a defendant seeks to rely on having had a reasonable excuse, the defendant bears an evidentiary onus in relation to that matter. The penalty remains unchanged from the current offence.

Clause 28. Section 89G replaced

Section 89G is repealed and replaced to reflect contemporary drafting style and ensure compliance with the criminal responsibility provisions in Part IIAA of the Criminal Code.

Clause 29. Section 119 amended

Section 119 amended to give the Northern Territory Civil and Administrative Tribunal the power to review a determination of estimated carrying capacity made under proposed section 54(1) or (3).

Clause 30. Part 13 inserted

New Part 13 **Transitional matters for Pastoral Land Amendment Act 2017** and proposed section 136 inserts a standard transitional provision for offence provisions. Offences committed before commencement of the Act will be prosecuted under the provisions of the Act before these amendments took effect.

Clause 31. Act further amended.

The schedule has effect to amend listed sections to modernise the wording used in the Act.

Clause 32. Regulations amended

Confirms this Act amends the *Pastoral Land Regulations*.

Clause 33. Regulation 12 amended

Regulation 12 amended to reference estimated carrying capacity and remove reference to the *Valuation of Land Act* as noted in clause 12 for proposed sections 54 and 55.

Clause 34. Regulation 12A inserted

Proposed regulation 12A inserted prescribing the rate of interest applicable for the late payment of rent penalty relating to proposed section 57 in clause 14.

Clause 35. Regulation 31 amended

The proposed inclusion in regulation 31 of the following prescribed purposes; forestry; agriculture; horticulture; and agriculture will enable lessees to apply to the Minister for consent to sublease, all or part of a pastoral lease for these purposes.

Current prescribed purposes include generating and transmitting electrical power across pastoral land; supplying across the land, gas, liquid fuels or water; housing facilities as defined in section 7 of the *Telecommunications Act*, housing surveying and scientific measurement equipment; operating a commercial tourist enterprise; and keeping and breeding animals other than stock.

The intent of this provision is to support the non-pastoral use amendments made to the Act in 2014 and potential investment and diversification of the pastoral estate.

Clause 36. Repeal of Act

This is a standard clause which provides that the *Pastoral Land Legislation Amendment Act 2017* expires the day after it commences. As this is an amending Act, there is no need to retain the Act on the statute book, once the amendments to the *Pastoral Land Act* and the *Pastoral Land Regulations* have been effected.

Statement of Compatibility with Human Rights

This Bill is compatible with human rights as defined in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Bill

The purpose of the Pastoral Land Legislation Amendment Bill 2017 (the Bill) is to amend the *Pastoral Land Act* and *Pastoral Land Regulations* to:

- (a) implement a new methodology to set pastoral lease rents based on the capacity of the lease to support livestock (using estimated carrying capacity);
- (b) rectify an anomaly regarding penalty for late payment of pastoral rent;
- (c) enable the grant of subleases for non-pastoral purposes;
- (d) refine consent to transfer provisions to capture share transfers;
- (e) increase the number of members on the Pastoral Land Board; and
- (f) align payment periods for pastoral lease rent with existing Government policy.

The Bill also considers consequential amendments to:

- (g) align offence provisions with requirements of Part IIAA of the Criminal Code.

Human rights implications

The Bill engages the right conferred under Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

Strict liability

Some offences in the Bill are strict liability offences or prescribe strict liability for certain physical elements in an offence. Section 43AN of the Criminal Code states that, where strict liability is prescribed for an offence or an element of an offence, there are no fault elements for the offence or the physical element, and the defence of reasonable mistake of fact under section 43AX is available.

Strict liability offences engage the presumption of innocence because a person can be found guilty of an offence without the need for the prosecution to prove fault or a 'guilty mind' for the offence or an element of the offence.

The following are strict liability offences:

- section 38(5) – interference with Aboriginal rights reserved under a pastoral lease;
- section 73(1A) – pastoral lessee failing to comply with a reasonable requirement in a notice from the Pastoral Land Board regarding the control of declared feral animals;
- section 75(2) – a person removing, defacing or damaging a marker at a monitoring site;

- section 82(2) – a pastoral lessee not complying with a direction from the Pastoral Land Board to revoke or amend a notice temporarily closing public access of an access route; and
- section 83(3) – failing to comply with a declaration or condition of a declaration made by the Pastoral Land Board regarding the closure of access for rehabilitation or other reason.

In the main these offences apply to a pastoral lessee or other person who would reasonably be expected to understand the conditions and obligations of a pastoral lease or a notice from the Pastoral Land Board. The offences are not punishable by imprisonment and a defence of reasonable excuse applies to each of them. What is a reasonable excuse will be up to a court to determine in the circumstances of the case. The offences are regulatory in nature and act as a deterrent to behaviour that would compromise the appropriate management of pastoral leases.

A number of offences have one element to which strict liability applies. The elements are:

- a member of the Pastoral Land Board has obtained information in the course of the member's duties as a member (section 22(1));
- a person has received a notice from the Minister (section 35(4) and 40(7));
- the Minister has not consented to a lease transaction (section 67(1));
- an area is a 'fenced reference area' (section 74) or an 'access route' (section 80);
- a pastoral lessee has failed to advise the Pastoral Land Board of damage to a fence that the lessee knows about (section 74(6)); and
- a pastoral lessee received a written notice from the Pastoral Land Board (section 89G(2)).

The relevant conduct and circumstances in which offences under these provisions could be committed require the prosecution to prove fault. The elements to which strict liability attach are matters that are either within or ought to be within the knowledge of a defendant. The offences are regulatory in nature and are not punishable by imprisonment. A defence of reasonable excuse applies to the offences under sections 35(4), 40(7), 74(6) and 89G(2).

Conclusion

The Bill does interfere with the presumption of innocence but in a reasonable and proportionate manner to achieve legitimate outcomes.

The Bill is therefore compatible with human rights.