



5 Milner Street,  
Hindmarsh SA 5000

**Phone:** (08) 7127 4630

**Fax:** (08) 82319773

**Website:** [www.ncssa.asn.au](http://www.ncssa.asn.au)

PIRSA.PastoralActReview@sa.gov.au

Sunday 18 October 2020

**Re: Comment on the Pastoral Lands Bill**

To whom it may concern,

The Nature Conservation Society of South Australia (NCSSA) appreciates the opportunity to comment on the Pastoral Lands Bill. Since 1962, the NCSSA has been a strong advocate for the protection of native vegetation and biodiversity in South Australia with particular attention being paid to nationally and state listed threatened plants, animals and ecological communities and management of protected areas.

The NCSSA does not support the Pastoral Lands Bill as currently drafted and believes it must be withdrawn and redrafted to more accurately reflect the outcomes of the public consultation PIRSA undertook on the current *Pastoral Land Management and Conservation Act 1989* (PLMC Act).

This is because, fundamentally, the Bill is based on the premise that pastoralism is the only legitimate use of the rangelands, and all other uses are relegated to 'alternate land use' status that must 'support' pastoralism. It is therefore skewed to an unacceptable degree towards pastoral interests and does not adequately provide for the many other legitimate and diverse land uses, aside from pastoralism, that are already taking place on the rangelands, including nature conservation.

Neither does the Bill provide for an adequate regime of oversight for working pastoral leases to ensure good land condition is maintained. A key purpose of government oversight is to prevent overstocking of these fragile and highly variable landscapes, particularly following episodic rainfall events that are critical for the long-term resilience of ecosystem function. The proposed oversight regime will be inadequate to achieve this. Limits on stock numbers are to be removed and assessments of land capacity, whilst intended to occur every 10 years which is marginally more frequent than the current 14 years periodicity, will rely heavily on remote sensing. The NCSSA does not believe this will be sensitive enough to detect changes at the scale required and in a timely manner, i.e. before degradation occurs. The NCSSA is extremely concerned that the combination of the possibility of extending leases to 100 years, inadequate oversight of land capacity and the removal of stock maximum limits will create de facto freehold arrangements that will prioritise the economic incentive to maximise production above all other concerns, including maintaining good land condition.

The NCSSA is also concerned that the Bill does not provide certainty for nature conservation on pastoral leases currently being undertaken by private individuals and conservation organisations. Whilst 'alternate land uses' *may* be approved under Section 27, there is no detail as to how or why this would occur, with the Explanatory Guide stating 'each case will be assessed on its own merits'. It is not acceptable to defer this detail until after the Bill is passed. In consultation sessions on this Bill, the NCSSA has been advised that Section 27 provides a 'clear pathway' for the approval of 'alternate land uses' when in fact it provides no certainty for the continuation of current arrangements for pastoral leases actively managed for nature conservation under

legitimate instruments such as Heritage Agreements under the *Native Vegetation Act 1991* or that have been purchased specifically for inclusion in the National Reserve System, often using public funding.

This is because continuation of current arrangements would rely on Pastoral Board approval, and current Pastoral Board policy states “non-pastoral purposes cannot override the primary pastoral purpose of a pastoral lease as intended by the objects of the PLMC Act”<sup>1</sup>. As the Objects in the Bill are even more skewed towards pastoralism than the PLMC Act, it seems very unlikely that nature conservation would be approved as an ‘alternate land use’.

In addition to existing arrangements, this Bill also creates unnecessary legal uncertainty for future nature conservation activities, both those that would be voluntary (like Heritage Agreements and carbon farming arrangements) as well as those which will be legally required under state and national laws to ‘offset’ environmental damage from operations such as mining or renewable energy installations. This is because it would never be certain, and would be subject to change, as to whether or not the Pastoral Board deemed that these ‘alternate land uses’ were ‘support(ing) the economic sustainability of pastoralism’, as per the Objects of the Bill.

Respondents to the consultation on the PLMC Act clearly called for arrangements that supported sustainable diversification of uses within the rangelands, including for specific provisions for nature conservation. Alternative land uses such as tourism, carbon farming and nature conservation are critical for the long-term ecological and economic viability of pastoral properties and the communities that support them – particularly during times of drought and in areas considered marginal grazing country. It is evident that the proposed Bill does not reflect this consultation outcome. The proposed governance arrangements are also inconsistent with the consultation summary: respondents called for an independent body that is representative of all interests and user groups (including scientists) to make decisions with respect to the pastoral zone, however, the proposed composition of the Pastoral Board within the Bill is heavily weighted in favour of pastoralists with no requirement for other interests or user groups to be represented.

The NCSSA is also concerned that the Bill does not provide an appropriate compliance spectrum, with only minor penalties at one end and lease cancellation at the other. Further, penalties within the Bill are not proportionate in all cases and are insufficient to deter poor behaviour. For example, the maximum fine of \$50,000 applies both to members of the public who may be found to be in breach of the requirements of this Bill by camping in the wrong place as well as to lessees found to be in breach of their lease conditions, which is arguably a much more serious offence.

The NCSSA provides further commentary on all of the above issues on the following pages and looks forward to working with PIRSA on the redrafting of this Bill prior to its introduction to Parliament.

If you would like to clarify or discuss this submission please contact Julia Peacock, Nature Advocate, on 0400 277 423 or via email at [julia.peacock@ncssa.asn.au](mailto:julia.peacock@ncssa.asn.au).

Yours sincerely,



Michael Stead

President, NCSSA

---

<sup>1</sup> [https://pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0010/366742/Pastoral\\_Board\\_Guideline\\_-\\_Approval\\_non-pastoral\\_purpose\\_-\\_July\\_2020.pdf](https://pir.sa.gov.au/__data/assets/pdf_file/0010/366742/Pastoral_Board_Guideline_-_Approval_non-pastoral_purpose_-_July_2020.pdf)

## **NCSSA comments on the Pastoral Lands Bill**

### *The sustainable management of grazed pastoral leases to maintain good land condition*

The NCSSA is concerned that the Bill does not provide adequately for the sustainable management of leases actively managed for pastoralism. Ecologically sustainable development of South Australia's natural resources is a fundamental requirement under a range of national agreements, strategies and legislation including the *Murray Darling Basin Agreement 1992*, National Strategy for Ecologically Sustainable Development 1992, and the *Environment Protection and Biodiversity Conservation Act 1999*, in addition to State legislation such as the *Landscape South Australia Act 2019* and the *Environment Protection Act 1993*. Australia's National Strategy for Ecologically Sustainable Development defines ecologically sustainable development (ESD) as: 'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased.' ESD can be achieved partially through the use of the precautionary principle; if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. Inter-generational equity is also a core principle for ESD that requires the present generation to ensure that the health, diversity, and productivity of the environment are maintained or enhanced for the benefit of future generations. As stewards of land under pastoral lease, lessees have a responsibility to all South Australians – both present and future, to ensure that the condition of the land is maintained or improved.

Compared with the existing *Pastoral Land Management and Conservation Act 1989*, the draft Bill places far less emphasis on conserving the natural values of the rangelands for the long-term, with most references to conservation removed in the proposed new legislation. Examples include:

- removal of references to "prevention of degradation of the land and its indigenous plant and animal life" and "rehabilitation of the land in cases of damage" (s.4, PLMCA);
- the focus placed on the "growth of the pastoral industry", rather than an emphasis on the long-term sustainability of the industry and the economic and social well-being of local communities;
- removal of the lessee's duty to "prevent degradation of the land" (s.7, PLMCA); and
- removal of the lessee's "obligation to ensure that numbers of stock on the land or a particular part of the land do not exceed the maximum levels specified in the lease, except with the prior approval of the Board" (s.22, PLMCA).

The NCSSA is particularly concerned that removing limits on the maximum number of stock permitted on pastoral leases creates a very real risk of long-term decline in the condition and productivity of South Australia's rangelands. A key purpose of providing regulatory oversight of this Crown resource is to counter the economic incentive to overstock these fragile and highly variable landscapes, particularly following episodic rainfall events. Vegetation requires an opportunity to grow and set seed in order to maintain long term productivity, and limits on the number of stock have been an important tool for allowing this to occur so as to prevent long-term decline in the health and productivity of SA's rangelands. Current arrangements allow for approval to be given to increase stocking numbers in response to climatic conditions where it is appropriate to do so.

The NCSSA acknowledges that land condition assessments would occur every 10 years rather than 14 years under the arrangements proposed in the Bill, which is a marginal improvement. However, the NCSSA does not believe that assessments every 10 years would result in the 'rapid identification of inappropriate land use', which is described in the Explanatory Guide for this Bill as being the counter to lessees who see the removal of stock limits as an opportunity to overgraze.

The Explanatory Guide also indicates assessments of land capacity will be heavily reliant on remote sensing. However, the NCCSA contends that this will not be sensitive enough to detect changes at the scale required and in a timely manner. By the time degradation is evident from satellite or other aerial imagery, the damage will be done and the degradation likely irreversible. Remote sensing must be calibrated with meaningful, proactive on-ground assessment. It is therefore critical that land condition assessments using remote sensing are combined with regular ground-based programs and not considered as a stand-alone monitoring tool.

The NCCSA believes that the combination of the removal of stock maximum limits with the possibility of extending leases to 100 years and inadequate oversight creates de facto freehold arrangements that will result in the prioritisation of the economic incentive to maximise production above all other concerns, including land condition, and that the health of our rangelands will suffer as a result.

#### *Uncertainty regarding pastoral leases (and portions of leases) currently dedicated to nature conservation*

Nature conservation is a legitimate land use, on both public and private land. Given that the entire rangelands cover around 50% of South Australia, we must dedicate portions of this area to nature conservation in order to properly protect and conserve our natural heritage. Nationally, Australia has committed to this goal, including to establishing adequate protected areas and supporting the recovery of threatened species, through a number of international agreements including the Convention on Biological Diversity.

Accordingly, there are a number of pastoral leases, or portions of pastoral leases, which are currently proactively managed for nature conservation. These areas have been established through various mechanisms, including by lessees entering into voluntary Heritage Agreements under the South Australian *Native Vegetation Act 1991*, such as on Gluepot Reserve, and via lease purchase with both public and philanthropic funds, such as Kalamurina Wildlife Sanctuary, for dedication to our National Reserve System.

Under these proposed new arrangements, permission to continue this land use is uncertain at best.

The NCCSA has been advised by PIRSA in a consultation session on this Bill that it provides a “clear pathway” for ‘alternate land use’, such as conservation, under Section 27. However, the Bill merely states that the Pastoral Board may approve alternate land uses. It does not describe the circumstances in which such an approval will be granted, deferring all detail to policies. Current Pastoral Board policy suggests nature conservation would not be an approved land use, as “non-pastoral purposes cannot override the primary pastoral purpose of a pastoral lease as intended by the objects of the PLMC Act”<sup>2</sup>. The Objects in the Bill are even more skewed towards pastoralism than the PLMC Act, and therefore they are even less likely to be interpreted as being consistent with nature conservation.

The Bill also contains a range of other provisions (including the Section 5 Objects, Section 7 General duties of pastoral leases and Section 25 Conditions of pastoral leases) that require proactive management of leases for pastoralism. The transitional provisions under Part 4 also do not provide any certainty that permission will be granted by the Pastoral Board, as any conditions must be consistent with the new Act, which prioritises pastoralism over all other land uses and makes no reference to nature conservation in its Objects. Recent advice has been provided that leases currently managed ‘in a way that is inconsistent with the Bill’, i.e. for conservation, will be transitioned to a more suitable alternative Crown Lease type, however, NCCSA understands that such ‘transitions’ are arduous and complex to undertake in practice.

Therefore, as currently written, the NCCSA believes the Bill poses a completely unnecessary and unacceptable legal risk to the areas of pastoral estate currently being legitimately and proactively managed for nature conservation by private conservation organisations and individual landholders.

---

<sup>2</sup> [https://pir.sa.gov.au/\\_\\_data/assets/pdf\\_file/0010/366742/Pastoral\\_Board\\_Guideline\\_-\\_Approval\\_non-pastoral\\_purpose\\_-\\_July\\_2020.pdf](https://pir.sa.gov.au/__data/assets/pdf_file/0010/366742/Pastoral_Board_Guideline_-_Approval_non-pastoral_purpose_-_July_2020.pdf)

### *Future leases (and portions of leases) to be preserved for nature conservation*

The Bill provides no certainty that extending Australia's protected area estate by dedicating new areas for nature conservation will be permissible throughout this vast area of South Australia. According to South Australia's Protected Area Strategy, areas of the pastoral estate comprise under-represented land types in our reserve system<sup>3</sup>. For example, areas such as the Finke, Broken Hill Complex, Stony Plains and Flinders Loft Block IBRA Regions are currently well under-represented<sup>4</sup> so further dedication is therefore needed for a comprehensive, adequate, and representative reserve system. However, voluntary conservation agreements (like Heritage Agreements) on parts of leases and leases being dedicated for nature conservation are arrangements that are very unlikely to be approved by the Pastoral Board under these proposed arrangements.

The NCSSA also believes the Bill does not adequately provide for lessees who may wish to enter into carbon farming arrangements or provide adequately for the provision of 'significant environmental benefit' offsets that might be required under the SA *Native Vegetation Act 1991* or offsets required by the federal *Environment Protection and Biodiversity Conservation Act 1999*. Even though these land uses may be construed as 'support(ing) the economic sustainability of pastoralism', as per the Objects of the Bill, this would never be certain, and may be subject to change depending on the Pastoral Board policy at the time, creating investment and legal uncertainty.

### *The Pastoral Board*

The consultation process found that "respondents felt that an independent body (representative of all interests and user groups, including scientists) was the best way to ensure decisions are objective, consistent and responsive", but the proposed Board structure and nomination process does not ensure representation of all interests and user groups. Rather, it will be made up of a majority of, and chaired by, pastoral lease holders. The 'nomination committee' that will put forward candidates consists of 2 out of 3 organisations with a major pastoral focus. Whilst 'conservation of productive pastoral land' is a skill set that may be represented amongst candidates, this is not guaranteed, as will be the case for Aboriginal people or those with a particular interest in tourism, renewable energy, mining and public access to pastoral lands.

The NCSSA believes there should be a requirement for representation on the Board from a range of stakeholders, including scientists with specific knowledge of the biodiversity of the rangelands as well as from the State's peak conservation organisation, the Conservation Council of SA. It is also retrograde to remove the requirement for any gender balance on the Board.

### *Penalties*

The NCSSA is concerned that the Bill does not improve on current compliance arrangements, which include only minor penalties at one end of the spectrum and cancellation of leases at the other end. The Bill should provide for an appropriate, escalating range of responses to non-compliance with the Bill, with penalties that will actually deter wrong behaviour. As currently drafted, the penalties in the Bill do not appear to be commensurate with the seriousness of the breaches in all cases. For example, someone who "misuses" pastoral land, which may include unknowingly camping in the wrong location, could be liable for a \$50,000 penalty (Section 43). This is the same as for a lessee fails to comply with a compliance notice in relation to degrading pastoral lands or breaching lease conditions, which is arguably a much more serious offence (Section 45). The maximum penalty for failing to verify stock levels is only \$10,000, which would be the price of some individual bulls (Section 46).

---

<sup>3</sup> See page 22 of *Conserving Nature: South Australia's Protected Area Strategy*

<sup>4</sup> <https://www.environment.gov.au/system/files/pages/3a086119-5ec2-4bf1-9889-136376c5bd25/files/ibra-underrep-capad-2018.pdf>