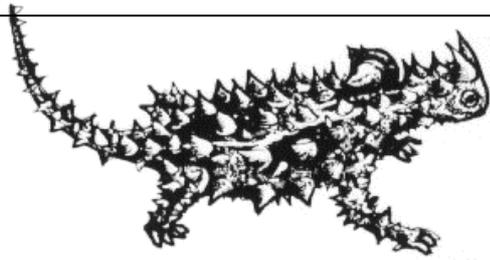


Arid Lands Environment Centre, Inc.



Office 39 Hartley St (Old Hartley St School)
Mail PO Box 2796 Alice Springs NT 0871 Australia
Phone +61 (08) 8952 2497
Fax +61 (08) 8953 2988
E-mail info@alec.org.au
WWW <http://www.alec.org.au/>
ABN 50 100 640 918

28 February, 2005

Attention: Scott Wauchope, Department of Infrastructure, Planning and Environment

Review of the Northern Territory Pastoral Land Act 1992

Submission by: the Arid Lands Environment Centre (ALEC)

Dear sir,

This submission is prepared in response to the *Review of the Pastoral Land Act 1992 Key Issues Paper* released by the Northern Territory Government's Department of Infrastructure Planning and Environment in December 2004.

ALEC is a community and membership based 'not for profit' association that investigates, networks, informs, advocates and acts on environmental and sustainable development issues applicable to the arid zone and desert communities. ALEC was formed in 1980 and remains the pre-eminent channel of community oversight on the central Australian environment.

This submission has been assisted by a number of ALEC members with specialist understandings of the pastoral industry and conservation issues in the rangelands.

Purpose of submitting comment on the Key Issues paper

ALEC welcomes the opportunity to comment on the Key Issues Paper for the Review of the *Pastoral Land Act 1992* (hereafter referred to as PLA). We note, however, some difficulty in determining the purpose of public comment at this stage of the review and hence in framing our submission.

The purpose of the Key Issues Paper is given in that paper as '*to outline the issues raised during the consultation period for the discussion paper, for further consideration and comment by interested parties.*' Further '*this stage of the review process will enable analysis of the degree of consensus and/or divergence of opinions among stakeholders on the issues raised.*'

It is not clear how it is intended to analyse the 'degree of consensus and/or divergence of opinions among stakeholders' from submissions to the Key Issues Paper. Clearer guidance on this point could have assisted us in framing our submission.

Overarching comments: towards a "Rangelands Utilisation Act"

ALEC would summarise the objective of the Act as follows: **To encourage and enforce appropriate and sustainable utilisation of rangelands.** We believe this objective should be enabled by the Act, but are concerned that the current construction of the Act does not satisfy the need for flexibility and methodical public oversight that would be appropriate for guiding our relationship with the enormous and varied "pastoral" estate.

We welcome the tentative moves toward alternative utilisation of these lands: indeed, ALEC would energetically support a deeper re-think of the Act that highlighted its objective as enhancing the common wealth through appropriate and sustainable engagements with the land. In an important way, maintaining this legislation as a “Pastoral” Land Act hinders its future as an enabling framework for many different land utilisation approaches.

In practice, supporting such a radical re-think does not require much variation from the current commentary, and in fact may offer some more attractive avenues toward constructive compromise.

For example, there are several commentary threads in the Key Issues Papers related to appropriate practice...how can it be specified, monitored, and enforced or encouraged. The current discussion centres on stocking rates and other terms that are specific to grazing cattle. But this doesn't help at all as operators look towards alternative utilisation strategies (eg eco-tourism, wild harvest, etc). So we would recommend that the Act simply require that any land utilisation must be undertaken according to a certified land utilisation plan. . Such utilization plans could be phased in over a realistic period of time (eg at least ten years) and developed in concert with landholders in recognition of the time and effort required to undertake them comprehensively. These comprehensive management plans would be certified by either the Board or by a special sub committee focused on land management and strategies. Instead on trying to pre-emptively consider land use options in detail, the Act would simply specify the certification arrangement for utilisation plans, and detail the powers of an implementing Committee

Such a Committee should be representative of the various stakeholder groups, including graziers, traditional owners, researchers, community, government, etc. This provides a reasonable solution to the problem of the PLB being a closed shop that supports a single industry to the detriment of alternative visions for our common estate.

Likewise, the representative committee would seek input from the INRM framework, and could delegate inspection/auditing fieldwork to 3rd party commercial contractors if desired.

With this approach, the current concerns of the majority of leaseholders (grazing) would be supported and advanced...anyone using their lease to graze cattle would need to provide a certified utilisation plan to the Board within the specified phase-in period: this fits in with the current move toward development of industry best practice, EMS, PMP etc. We also get a piece of legislation that will seamlessly support proposals for new/additional utilisations...as long as an appropriate plan can be presented and certified.

Conformance with these certified plans would be a condition of the lease: and it is here that a flexible, appropriate approach to reward and punishment can be applied without needing to write these things directly into the Act.

We therefore highly recommend that this review conclude with a fundamental re-structure of the Act and its methods of implementation.

Restatement of position

Here we give in brief the general position of ALEC on those issues raised in the Key Issues Paper in which we have a primary interest, either by reiterating a comment listed in that paper or giving a new statement. We have addressed all of the issues with the exception of Issues 2, 12, 13, 14, 22, 29 and 30. The position of ALEC on these issues cannot be implied.

ALEC would also like to register an interest in being involved in any working groups formed in subsequent stages of this review (as referred to under the ‘Refinement of Issues and Development of Options’).

Particular issues that we would like to contribute to include (Issues 17, 23, 26, 31, 34 and 42):

- Biodiversity Conservation

- Environmental Management Plans
- Monitoring and Incentives and Conservation Agreements.

Definitions and Objects of the *Pastoral Land Act* (Issues 19 and 32)

ALEC agrees that the objects of the current act need to be amended so that non-pastoral activities are consistent with the act (see below our comments supporting non-pastoral use of pastoral land and proposing the renaming of the Act).

We also believe that the principle of ecological sustainable development should be stated within the objects of the Act. Both ecological sustainable development and non-pastoral activities need to be defined.

Non-pastoral use of pastoral land and diversification (Issue 1)

ALEC supports diversification of land use on pastoral properties as an alternative to cattle grazing provided this does not lead to degradation of biological and cultural assets and in the context of good property management planning (eg Property Management Plan or Environmental Management Systems).

We strongly suggest, given this move away from the exclusive use of pastoral land for grazing introduced animals, that an alternative name (other than 'Pastoral Lands') be considered for the Act. For example, use of the term 'Rangelands' could imply a greater flexibility that encourages economic activity in these areas that is also ecologically sustainable.

Pastoral Land Board and Pastoral Land Appeal Tribunal (Issue 9, 10 and 36)

Membership of the Pastoral Land Board should be increased and include members with expertise in various aspects of natural resource management and other stakeholders including indigenous and public interest groups.

Processes and reporting established by the PLA should be designed to deliver public transparency. Decisions of the PLB or Minister in relation to pastoral lands should be reported publicly along with their justifications and any submissions

Third party appeals should be allowed against decisions of the PLB and/or Minister. Any tribunal should include provision for third party appeals.

Powers of Minister to consent to the transfer of Pastoral Leases (Issue 7)

Some comments suggested that the viability of a Pastoral Lease as a stand-alone operation should be a criteria that must be satisfied before transfer of a pastoral lease is approved. We think this is difficult to constructively express in the Act. Our principle concern is that the mechanism of lease transfer cannot be used to avoid or reduce responsibilities for appropriate and sustainable land utilisation. Likewise, we would not want to see lease transfers hindered if such a transfer increased the potential for improved land conditions.

Pastoral Land Regulations including Duty of care, identification of safe carrying capacities and reporting annual stock returns (Issues 11, 16, 21, 27 and 39)

As covered in the over-arching comments, we would favour the relegation of detailed activity to the domain of a comprehensive, legally binding management plan appropriate to the land utilisation being undertaken. This does not mean that in the absence of such plans we would not favour a clause requiring reporting. ALEC very strongly believes that reporting is essential to providing accountability to the public on the leaseholder's performance as a manager of public estate. We want to emphasise, however, that specifying the details of reporting at the clause level inside the Act is a poor structural approach that is certain to deliver very average (unsatisfactory) results to all parties.

Major development works, clearing controls, subdivisions and grants (Issue 4, 5 and 8)

Assessment of all major developments, clearing controls and subdivisions on Pastoral Leases should be dealt with under the *Planning Act* so that there are more uniform processes across land tenures throughout the NT.

Rents (issue 38)

ALEC is wary of endorsing “one size fits all” solutions, and this applies to lease rates as well as anything else. We believe that the lease rates should be structured to maximize the opportunity for sustainable and appropriate utilisation of the rangelands. To this end, we recommend examining the potential to tie lease rate to the utilisation type/s proposed for the land. In this way, lease rates can be used as yet another mechanism to encourage best practice land management, providing incentives for good environmental/social/economic performance (or sanctions for poor performance).

We do not necessarily believe that raising rental rates across the board is a good way to fund the additional monitoring and management requirements proposed by some stakeholder groups. There is a range of special interests associated with the pastoral estate, and it seems awkward to deal with the funding for each of these interests through the rental arrangement. It may be more productive to deal with program or special interests as part of the management plans we proposed earlier.

This mechanism also suits general requirements that may be agreed to form part of all leaseholders obligations. For example, maintaining fire records could be mandated by specifying that obligation as a required component of all management plans proposed for certification. The proponent would be in the position of making a case for funding to the bodies that are stakeholders to formulate a practical model for underwriting the requirements.

This approach helps open up the opportunity for partnerships in land management from all philosophical perspectives without obligating the leaseholder unfairly.

With respect to local rates vs pastoral rates, ALEC does not have an informed position. We assume it is a relatively straightforward matter to assign infrastructure and services cost-recovery fairly.

Remedial provisions, offences and penalties; duration of Leases (Issues 3, 6, 20 and 33)

Strengthened monitoring, penalty provisions and procedures are supported by ALEC, but they should not be overly specified within the Act. There is a particular need to strengthen the sanctions related to failure to comply with remedial provisions. This could be at three levels:

- Encourage compliance by cooperative means, asking the lessee to take remedial action.
- If this is unsuccessful, then non-compliance should be treated as an offence with appropriate penalties.
- Continued non-compliance in spite of offence penalties should result in forfeiting of the lease.

These provisions should apply to both term and perpetual leases. In no case is it justifiable to approve a tenure without a detailed, holistic, and integrated management plan for land utilisation. The current moves toward EMS, PMP, and BMP are indicative of the trend in this direction of comprehensive management planning. The Act should explicitly declare the requirement for utilisation plans as a condition of lease (with appropriate industry assistance and time periods for phase-in).

While we are not necessarily advocating a system of fixed term rolling title leases, like that proposed for Queensland, we note that fundamentally there is a need to protect the public from unscrupulous leaseholders, as well as a need to provide some level of security to operators who are investing in the appropriate and sustainable utilisation of public land.

Public interest (Issue 35)

PLA should include a new section recognising and upholding the public interest in lands subject to pastoral leasehold tenure. This should include a definition of the term “public interest” in relation to pastoral lands and the requirement that the public interest be protected in and through all aspects of the administration and management of pastoral leases. We relate this argument to our overarching comments in which the fundamental purpose of this Act is to encourage and enforce the appropriate and sustainable utilisation of the public estate.

Public interest includes the recognition and protection of the environmental, social, cultural and non-grazing economic values of lands and waters covered by pastoral leases.

The public needs to be able to take action to ensure that the impacts of land utilisation activity do not impinge on public interest values, or where they have, that reparation mechanisms are enforced.

Suitability of land for pastoral purposes (Issue 40)

Although the PLA does require the PLB to monitor the land for degradation, this needs to be made more rigorous, comprehensive and transparent.

Land that is unsuitable, sensitive or degraded should be withdrawn from grazing use or subject to special enforceable conditions.

The power to declare some land as unsuitable for grazing also supports the notion that what we should be talking about is not a “pastoral” land act, but a **Rangelands Utilisation Act**.

Indigenous rights & interests (Issue 15)

ALEC supports mechanisms to ensure protection of cultural heritage sites and areas, sacred sites, native title and Indigenous access and use of pastoral land.

Biodiversity conservation, environmental management plans and monitoring (Issues 17, 23, 31, 34, 42)

While ALEC is concerned that biodiversity values are supported by the Act, we feel that describing specific mechanisms at the level of the Act is misplaced detail.

We suggest that the Act could describe a process for certification of packages such as EMS or PMP/BMP that are developed by industry, community, and scientific stakeholders. One possible mechanism is via the ISO 14000 certification used for EMS auditing and certification. This allows appropriate flexibility and balance/integration at catchment scales without locking things into the Act itself.

Some of the issues that would need to be discussed include:

- How should EMP/EMS be legislatively required?
- What are the best ways to integrate regional/catchment planning?
- Is there a suite of common issues that all management plans should cover?
- How should the management plans be regulated – ie by system of reward (eg stewardship/environmental funding) and penalty) or legislatively required or market incentives?
- Are there different levels of monitoring that should take place?
- Who should do what (eg a role for the EPA?)
- Who should have access to the results?

ALEC would be interested in assisting in the development of solutions to these issues.

Incentives and conservation agreements (Issue 26)

ALEC supports the suggestion that the review of the PLA should consider which incentive and stewardship payment models may be suitable for application in the NT, with the goal of introducing incentives for conservation management on pastoral lands. While such incentive schemes may not be specifically legislated,

it is important that the revised PLA provides a flexible framework that facilitates their introduction.

Examples that ALEC supports include:

- Performance-based lease arrangements.
- Rent variation.
- Tax exemptions.
- Environmental performance credits.
- Covenant programs.
- Negotiated contracts or auctions whereby the government buys conservation services (eg Bush Tender in Victoria).
- Annual payments for agreed conservation-based management activities (eg West 2000 Plus in NSW).

Compliance with national agreements and best practice (Issue 18)

ALEC supports a review of the PLA to ensure its consistency with national agreements and industry best practice.

Feral animals (Issue 24)

The control of many feral species (eg. cats, cane toads) is not the primary responsibility of individual pastoral lessees. However, the revised PLA should contain provisions:

- (i) To make it an offence to facilitate the spread of feral animal species; and
- (ii) To facilitate control programs for feral species whenever these are implemented in the future

Introduced pastures (Issue 28)

ALEC agrees with all the comments submitted on this topic that recognise the potential harm that any activity may cause to the public estate. The precautionary principle should be vigorously applied, particularly in situations where the only justification for promoting an introduced species is a perceived economic benefit.

Weeds (Issue 43)

PLA should not attempt to list all known environmental weeds (including buffel, gamba, para, olive hymenachne and mission grass) but should refer to bodies such as the Weeds Advisory Committee for continuously updated guidance on weed identification and control.

Some commentators have suggested that the PLA should include a specific statement about the responsibility of lessees to control weeds on their lease. We would suggest that, in light of continuously evolving science and understanding of the nature of our lands, it would be more appropriate to include the requirement for an appropriate and sustainable strategy within all proposed land utilisation plans. Ie, the PLA should require lessees to include consideration and actualisation of weed management, but this should happen through the vehicle of a management plan, not through hard-wired wording in the Act itself.

Fire (Issue 25)

The review of the PLA should consider whether the current legislative arrangements are sufficient to ensure adequate management of fire on pastoral lands, and whether additional specific provisions relating to fire management should be incorporated into the revised PLA.

The revised PLA should require, through the mechanism of an integrated utilisation plan:

1. A specific requirement for lessees to manage fire on their lease for both production and environmental goals.
2. A specific obligation of lessees not to implement fire regimes that cause unnecessary environmental damage.
3. The requirement of lessees to include consideration of fire management in the EMP for their property

It may be appropriate for the PLB to have a formal role in working with the Bushfires Council and Regional Bushfires Committees to develop regional fire management plans that take into account production, environmental and safety considerations.

Protection of areas of high conservation value / Rivers, wetlands& coasts / Threatened species (Issue 37)

ALEC agrees with all of the comments submitted on this point with the exception of including a list of threatened species within the PLA.

Sustainability of the pastoral industry / Economic viability & proper accounting of costs (Issue 41)

In general, it should be clear that ALEC supports economic utilisation of the rangelands. But we note that there is a historical bias toward economic justifications that are simply not grounded in rigorous cost-benefit analyses that take the long-term health of the country into proper account.

We suggest a number of mechanisms for addressing this problem, including:

- Reference to disinterested 3rd party specialists such as the Productivity Commission
- Provision at all points for public interest bodies to review and challenge decisions undertaken by the Act's agencies.
- A high level of public reporting on land utilisation activities
- A bias toward conservative utilisation of the land in recognition of our as yet very limited understanding of this complex and continuously adapting environment.

For more information, please contact the ALEC office at any time.

Best regards,



John Brisbin
Coordinator