PRODUCTIVITY COMMISSION

Pastoral Leases and Non-Pastoral Land Use

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Foreword

This paper consolidates and extends previous Commission research on pastoral lease administration and management of Australia's rangelands. The effective management of the rangelands is important for economic, environmental, social and cultural reasons.

Pastoral lease arrangements have existed since the mid-1800s and have been subject to numerous reviews. However, the underlying arrangements have remained largely unchanged.

There is significant potential for non-pastoral land uses — some are emerging through diversification and others through changes in primary land use. However, the present study identifies various constraints on non-pastoral land uses within the current pastoral lease arrangements.

The research raises important questions about whether pastoral lease arrangements are still the most appropriate means of realising rural and regional development opportunities, while ensuring the future maintenance of the rangelands.

Gary Banks

Chairman

July 2002

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Abbreviations

AACo	Australian Agricultural Company
AAGIS	Australian Agricultural and Grazing Industry Survey
ABARE	Australian Bureau of Agricultural and Resource Economics
ABHF	Australian Bush Heritage Fund
AGS	Australian Government Solicitor
ANZECC	Australia and New Zealand Environment and Conservation Council
ARMCANZ	Agriculture and Resource Management Council of Australia and New Zealand
AustLII	Australian Legal Information Institute
AWC	Australian Wildlife Conservancy
CPL Act	*Crown Pastoral Land Act 1998* (New Zealand)
DNR	Department of Natural Resources (Queensland)
DNRM	Department of Natural Resources and Mines (Queensland)
ESL	Earth Sanctuaries Ltd
IC	Industry Commission
IULA	Indigenous Land Use Agreements
LINZ	Land Information New Zealand
NCP	National Competition Policy
PC	Productivity Commission
SEAC	State of the Environment Advisory Council

OVERVIEW

Key messages

- Pastoral leases exist on around 44 per cent of Australia's mainland area and are administered and controlled through a land tenure system designed to facilitate and support pastoralism.
- Pastoral lease arrangements are characterised by extensive and prescriptive legislation and regulation. The arrangements typically constrain the emergence of non-pastoral land uses, such as tourism, farming of non-conventional livestock and conservation of native wildlife.
- Uncertainty surrounding property rights held by State and Territory Governments and the application of lease conditions, such as stocking rates, may inhibit the emergence of non-pastoral land uses.
- Native title is a key element of the broader institutional framework — changes to existing land use will need to be consistent with native title.
- In some jurisdictions, pastoral lease rentals do not cover the costs of administering the pastoral lease arrangements or provide a commercial return to governments.
- There has been limited use of National Competition Policy to review State and Territory land management legislation.
- There is a case for a more comprehensive review of the net public benefits from retaining the pastoral lease arrangements.

Overview

Pastoral leases are a form of land tenure covering some 44 per cent (338 million hectares) of Australia's mainland area. The pastoral leases are generally situated in the arid and semi-arid regions and the tropical savannas — the Australian rangelands. The predominant use of pastoral leases is for grazing livestock (primarily sheep and cattle). However, there is increasing demand for land for non-pastoral uses, such as tourism, farming of non-conventional livestock (such as goats, kangaroos or camels) and conservation of native wildlife.

This report reviews pastoral lease arrangements across jurisdictions in Australia and the extent to which these affect the emergence of non-pastoral land uses. Some comparisons are also made with pastoral lease arrangements in New Zealand, which has a history and pattern of pastoral lease administration and land development similar to Australia. This report consolidates and extends previous Commission research on pastoral lease administration and management, and conservation of biodiversity on private land.

Pastoral leasing arrangements are generally designed to support and facilitate pastoralism. The arrangements typically constrain the emergence of non-pastoral land uses, and inhibit competition between pastoral and non-pastoral land uses. Further, the arrangements may increase the relative costs and risks of managing land for non-pastoral land uses and influence investment decisions. As a consequence, innovative land uses and potential economic and ecological gains, that could benefit land managers and the wider community, may be stifled.

Some non-pastoral land uses, such as eco-tourism and conservation of biodiversity, may provide particular environmental benefits. For example, a number of private conservation groups have started managing pastoral leases for conservation purposes. However, on some pastoral leases, there may be limited commercial opportunities for non-pastoral land uses. Opportunities for non-pastoral land uses will also be affected by other factors, such as access to finance, infrastructure and information.

The operating characteristics of farm businesses on pastoral leases vary across jurisdictions according to: location, seasonal rainfall, the size of the pastoral lease and the management structure. Typically, the larger corporate enterprises are able to generate higher farm cash income through their size advantages. Many smaller

family enterprises experience low and variable levels of income from pastoralism. Both types of enterprises may benefit from realising opportunities for non-pastoral land use through diversification and/or a change in primary land use.

Pastoral leasehold tenure

In Australia, pastoral lease arrangements have evolved since the mid-1840s as an administrative and prescriptive approach to land management. The initial objectives of governments were to control early pastoral activity and to facilitate land development and closer settlement. More recently, governments have focused on ecologically sustainable land management, and greater monitoring and control of pastoral land use.

State and Territory Governments have the primary responsibility for the management of pastoral leases. New South Wales, the Northern Territory, Queensland, South Australia and Western Australia have land management legislation for the administration of pastoral leases. Commonwealth, State and Territory legislation pertaining to native title, mining, and native vegetation also affects the operation of pastoral leases.

Native title is a key element of the broader institutional framework affecting pastoral leases. Where native title is applicable, diversification and/or a change in the primary land use on a pastoral lease must be consistent with the *Native Title Act 1993* (Cwlth). The legal and institutional relationships between native title and pastoral leases may be influenced by future court determinations.

Pastoral leasehold tenure provides a more restricted range of property rights than freehold land (see box 1). A pastoral lease provides lessees with an exclusive right to conduct activities associated with pastoralism, including raising livestock and developing the infrastructure necessary for pastoralism. Activities not within the terms of a lease, such as forestry, operating an eco-tourism business or a private conservation initiative, are subject to government approval. Governments also have the power to resume pastoral leasehold land for a wide range of purposes, such as for public infrastructure or to establish a national park.

Generally, pastoral lease arrangements are not specified in terms of performance goals or outcomes. The arrangements typically focus on control of the specific use of land for pastoralism, rather than addressing the management of the underlying natural resource base — for example, lease conditions primarily take a prescriptive approach to managing land use by specifying the type and level of stock that must be grazed.

Box 1 **Pastoral lease purpose and conditions**

A pastoral lease is issued for a specified time, area and purpose as a contract between a State or Territory Government and a lessee. Generally, a pastoral lease must be used for pastoral purposes, although some supplementary or ancillary uses to pastoralism may be allowed.

A range of conditions are attached to a pastoral lease to control land use. These set out the rights of both the lessee and the government, and the responsibilities of the lessee to undertake certain activities in a prescribed manner. Typical pastoral lease conditions include:

- *general conditions* — such as the term or length of the lease and the rental rate;
- *land management and use conditions* — such as controls on the type and level of stocking, the maintenance of fencing, watering points and stock holding sheds, and the lessee's broad responsibility to follow sound land management practices including a 'duty of care'; and
- *reservation conditions* — such as the rights of the government to timber and soil, the rights of the government to take back (resume) the land and the rights of public access.

Prescriptive control of inputs or management processes can reduce flexibility and hinder innovation. The pastoral lease arrangements lack flexibility to accommodate different or changing circumstances, and to enable resource managers to choose the most cost-effective ways of complying with lease conditions. More recently, the New South Wales independent review of the *Western Lands Act 1901* recommended a move from prescriptive activity-based land legislation to more outcome-focused, natural resource management-based legislation.

Different jurisdictions charge different percentage rental rates on the unimproved value of the land, ranging from 0.8 per cent in Queensland to 2.7 per cent in South Australia. The basis for establishing the rental rates, and the reasons for the different rates between jurisdictions, are unclear. In some jurisdictions, pastoral lease rentals do not cover the costs of administering the pastoral lease arrangements. A related issue is the appropriate commercial rental return to governments for the use of a pastoral lease — further research is required on this issue.

Accommodation of non-pastoral land uses

Until recently, the main approach to accommodating non-pastoral land uses was by discretionary changes to lease conditions and rental rates by the relevant managing authority. This discretionary approach, while providing some scope for non-pastoral

land uses, lacks transparency and may also involve inconsistencies, thereby creating uncertainty for investment decisions.

Some jurisdictions, such as Western Australia, use permits to regulate non-pastoral uses on land covered by pastoral leases. While providing a more transparent framework, the capacity for permits to facilitate non-pastoral land use, under the current arrangements, is limited in that they are generally issued for short timeframes and are not transferable with the lease title.

A further option for non-pastoral land uses, particularly where these are to become the primary land use, is to change the tenure for all or part of a pastoral lease. For example, in New Zealand, the current process of tenure review has the capacity to convert pastoral tenure to freehold tenure. It involves the Government and a lessee voluntarily negotiating an agreement, whereby land with commercial production potential is freeholded and land with high conservation values is transferred to the public conservation estate. Notwithstanding concerns about the costs and length of the process, tenure review appears to provide for a range of more intensive pastoral and non-pastoral land uses on formerly pastoral lease land. Tenure review will reduce ongoing government costs of pastoral lease administration, but there will be additional government costs with any expansion of the public conservation estate.

In Australia, where applicable, changes to existing land uses need to be consistent with native title. Other than seeking court determinations over native title rights, lessees, governments and traditional owners may seek to negotiate Indigenous Land Use Agreements for non-pastoral land uses.

Reviews of pastoral lease arrangements

At various times, individual jurisdictions in Australia have reviewed the administration and management of pastoral leases. However, the focus on pastoralism, and the use of leases and conditions that facilitate and support pastoral land use, have largely been retained.

In April 1995, all Australian Governments agreed to implement a National Competition Policy (NCP), to widen the scope for competition to promote economic growth and higher living standards for the community. Under the NCP, governments were required to review and, where appropriate, reform all legislation that restricted competition unless the benefits of the restriction to the community as a whole outweighed the costs, and the objectives of the legislation could only be achieved by restricting competition. However, the application of NCP to review State and Territory land management legislation has been limited thus far.

There is a case for a more comprehensive review of the net public benefits from retaining the pastoral lease arrangements. NCP could provide a suitable review framework, while recognising the particular circumstances existing in each jurisdiction. Among other things, such a review of pastoral leasing arrangements could consider:

- any constraints on the efficient allocation and use of pastoral leasehold land;
- the regulatory complexity of the pastoral lease arrangements;
- pastoral lease rentals and returns; and
- lease term, renewal and compensation provisions.

If public ownership and administration is still appropriate (and further examination of its costs and returns is warranted), then more performance-oriented or outcome-focused pastoral leasing arrangements may better provide for the long-term economic and ecological prospects of Australia's rangelands. Further, a shift to more 'neutral' leasing arrangements may better facilitate non-pastoral land uses, but any substantial change would need to be consistent with the broader institutional structure, including native title.

1 The evolution of pastoral leases

Pastoral leases are a form of land tenure that applies to the rangelands of Australia and the South Island high country of New Zealand. The predominant use of pastoral leases is for grazing livestock (primarily sheep and cattle). However, there is increasing demand for land for non-pastoral uses, such as tourism, farming of non-conventional livestock and conservation of native wildlife.

The Industry Commission's Inquiry into Ecologically Sustainable Land Management considered that:

> … alternative economic activity in the rangelands has the potential to be beneficial, both in terms of the economic circumstances of leaseholders and the ecologically sustainable management of the rangelands. (IC 1998, p. 387)

The development of non-pastoral land uses may not be an option on all pastoral lease land. However, current pastoral lease arrangements may constrain ecologically sustainable management and the further emergence of economically-viable non-pastoral land uses. The arrangements typically inhibit competition between pastoral and non-pastoral land uses, and can sometimes preclude alternative uses of the land. As a consequence, innovative land uses and potential economic and ecological gains, that could benefit land managers and the wider community, may be stifled.

The purpose of this report is to review pastoral lease arrangements across jurisdictions in Australia and the extent to which these affect the emergence of non-pastoral land uses. Some comparisons are also made with pastoral lease arrangements in New Zealand, which has a history and pattern of pastoral lease administration and land development similar to Australia. This report consolidates and extends previous Commission research on pastoral lease administration and management (see IC 1998 and PC 2001a).

Pastoral lease arrangements are set within a broader institutional framework that includes Commonwealth, State and Territory legislation pertaining to native title, mining and native vegetation. While this report does not examine such issues, it does provide some general background discussion of the relevant areas of the broader framework, and how these set the context for, and interact with, pastoral lease arrangements.

This chapter introduces the pastoral lease system, the broader institutional framework, and how legislative objectives have changed over time in Australia and New Zealand. Chapter 2 describes some characteristics of pastoral and non-pastoral land uses on pastoral leases. Chapter 3 reviews key aspects of the pastoral lease arrangements that operate in each jurisdiction, and the implications they may have for the emergence of potentially viable and ecologically sustainable non-pastoral land uses. Chapter 4 presents some concluding comments. Appendix A summarises Australian and New Zealand pastoral lease arrangements. Appendix B summarises the main differences between leasehold and freehold tenure.

1.1 The pastoral lease system

A pastoral lease is a form of land tenure that exists between a lessee and 'the Crown'. While different jurisdictions have different types of lease arrangements — for example, Western Australia and South Australia have pastoral leases whereas New South Wales has grazing leases — this report generally refers to these types of leases collectively as pastoral leases. Different jurisdictions may also have different terms and conditions that are attached to pastoral leases (see appendix A).

A pastoral lease provides lessees with an exclusive right to conduct activities associated with pastoralism, including raising livestock and developing the infrastructure necessary for pastoralism. Activities not within the terms of a lease are subject to government approval. Governments also have the power to take back (resume) pastoral leasehold land for a wide range of purposes. Where native title is applicable, activities on pastoral leasehold land need to be consistent with the *Native Title Act 1993* (Cwlth).

Young has identified that:

> The feature which differentiates land tenure [such as pastoral lease arrangements] from most other systems which seek to influence land use is that it mixes incentives, rewards and penalties all into one. (Young 1987, p. 175)

Pastoral leasehold tenure provides a more restricted range of property rights than freehold land as there are various lease conditions, lease rentals and management requirements imposed on it (see appendix B). Pastoral leasehold land may also have less security of tenure and fewer incentives for natural resource management. As a pastoral lease does not necessarily confer exclusive possession, it could, theoretically, accommodate the allocation of different property rights to different individuals — for example, different property rights could be allocated to different parties for grazing, forestry and tourism. However, the joint use of land by different

parties for different commercial ventures may create conflicts over resource use (IC 1998).

Around 44 per cent (338 million hectares) of Australia's mainland area is pastoral leasehold land. This makes up more than two-thirds of all privately managed land (freehold and pastoral lease). New South Wales, Queensland, South Australia, the Northern Territory and Western Australia account for more than 99 per cent of total pastoral leasehold land in Australia, with negligible amounts in the ACT, Victoria and Tasmania. Queensland has the largest area with around 62 per cent of the State being pastoral lease (see table 1.1).

Table 1.1 **Pastoral leasehold land, by jurisdiction, 2001**

Jurisdiction[a]	*Pastoral lease area*	*Pastoral lease area/ total mainland area*
	million hectares	%
Queensland[b]	107	62
New South Wales[c]	30	37
South Australia	42	43
Western Australia	96	38
Northern Territory	63	47
Australia total	**338**	**44**
New Zealand[d]	**2.2**	**8.1**

a ACT, Victoria and Tasmania have negligible areas of pastoral lease. **b** Pastoral holding term leases and grazing homestead perpetual leases. **c** Grazing leases only but includes some land where cultivation permits are in force. **d** There are also 0.25 million hectares of short-term pastoral occupation licences.

Sources: Geoscience Australia (2002); various Australian State and Territory and New Zealand departmental reports.

The majority of pastoral leasehold tenure is in the rangelands that comprise nearly three-quarters of Australia — the low rainfall and variable climate arid and semi-arid areas and, north of the Tropic of Capricorn, some seasonally high rainfall areas. The rangelands also include the slopes and plains of northern New South Wales and southern Queensland. The main ecosystem types are native grasslands, shrublands, woodlands and the tropical savanna woodlands. The rangelands are of important ecological significance with many of the ecosystems providing habitat for rare and endangered native wildlife. The rangelands are an important economic resource and have significant cultural and heritage values for indigenous and non-indigenous Australians (ANZECC and ARMCANZ 1999).

All of New Zealand's pastoral leases are in the South Island high country and cover some 2.2 million hectares or around 8 per cent of New Zealand's total land area. The South Island high country includes mountain ranges, intermontane basins, downlands with tussock grassland and associated plant communities, and distinct

flora and fauna. The high country has significant economic, conservation, recreation and cultural values for both Maori and other New Zealanders (Working Party on Sustainable Land Management 1994).

In Australia, responsibility for the management of pastoral leases is held at the State and Territory level. Most jurisdictions have primary legislation governing the administration and management of pastoral leases (see box 1.1). This land management legislation broadly establishes different categories of lease, rentals, conditions and administrative provisions. Other State and Territory legislation, such as native title, mining, and native vegetation legislation, also affects the operation of pastoral leases.

Box 1.1 **Primary land management legislation**

Most Australian jurisdictions and New Zealand have primary land management legislation governing the administration of pastoral leases. These include the:

- New South Wales *Western Lands Act 1901* (currently under review) and *Crown Lands Act 1989*;
- Northern Territory *Pastoral Land Act 1992* and *Crown Lands Act 1992*;
- Queensland *Land Act 1994*;
- South Australian *Pastoral Land Management and Conservation Act 1989* and *Crown Lands Act 1929*;
- Western Australian *Land Administration Act 1997*; and
- New Zealand *Land Act 1948* and *Crown Pastoral Land Act 1998*.

Land management legislation typically includes:

- administration arrangements;
- categories, terms and renewal provisions of pastoral leases;
- lessee rights, for example, to graze livestock but no rights to the soil, vegetation or water;
- the responsibilities of lessees to develop and maintain improvements;
- controls on stocking levels and duty of care requirements;
- discretionary activities and permitting arrangements;
- lease rental arrangements and lease valuation processes;
- lease resumption and compensation arrangements; and
- monitoring and enforcement provisions and penalties.

Sources: AustLII (2002); various State and Territory land management legislation.

In Australia, the operation of pastoral leases can also be affected by Commonwealth legislation, such as the *Environment Protection and Biodiversity Conservation Act 1999* and national policies, such as the *National Principles and Guidelines for Rangelands Management* (ANZECC and ARMCANZ 1999). The principles and guidelines were developed with input from both government and non-government rangeland stakeholders, and provide a national collaborative approach to rangeland and pastoral lease management.

In New Zealand, the *Land Act 1948* and the *Crown Pastoral Land Act 1998* provide for the administration, leasing, use and review of tenure of pastoral leases. Other legislation, such as the *Resource Management Act 1991*, is also relevant to the operation of pastoral leases.

Each jurisdiction has a distinct managing authority for pastoral leases. The granting of a pastoral lease and/or applications to change lease conditions are the responsibility of the Minister of Lands or Natural Resources in New South Wales, Queensland, Victoria, the Northern Territory and the Australian Capital Territory. In South Australia and Western Australia, a government-appointed pastoral board assesses proposals and reports to the relevant minister with its recommendations. In New Zealand, a government-appointed Commissioner of Crown Lands administers the pastoral lease provisions with day to day management outsourced to a number of private contractors.

1.2 Brief history and objectives

Pastoral leasehold tenure in Australia and New Zealand has evolved through several distinct phases. This section briefly outlines the history of pastoral leases and how the stated objectives of land management legislation have changed over time.

Pastoral leases in Australia

The rangelands of Australia were occupied by Aboriginal peoples for more than 50 000 years before the arrival of European settlers. The pastoral industry began in New South Wales in the 1820s and then spread throughout the Australian rangelands (Abel et al. 1999).

Pastoral leasehold tenure began in New South Wales with the Imperial *Sale of Wastelands Act 1846* that authorised the granting of leases and licences to occupy certain Crown land for terms not exceeding 14 years. Pastoral leases were used:

> … as an expedient instrument for asserting ongoing Crown ownership of land in the face of rapid, uncontrolled, pre-emptive pastoral occupation. (Holmes 2000a, p. 213)

Pastoral leases provided early pastoralists with limited security of title, and allowed governments to retain both flexibility and control over the vast tracts of land used for pastoral purposes (Holmes and Knight 1994). Governments were concerned about the potential loss of revenue from land sales if uncontrolled land use was allowed, and were also 'seeking to preserve the option value for the future allocation and use of the land' (Holmes 2000a, p. 217).

Over time, governments used leases to facilitate land use intensification and closer settlement of land (Young 1987; Holmes 2000a, 2000b). However, the government aim of intensifying pastoral land use was often incompatible with the unreliable climate and limited carrying capacity of the rangelands. Problems emerged with undersized land holdings and overstocking — drought and the spread of rabbits and weeds contributed to economic and ecological stress (Holmes and Knight 1994).

Governments responded to these problems by offering rental concessions and longer and more secure tenures. As security of tenure improved for lessees, the focus of government land administration gradually shifted from promoting settlement to the maintenance of the *status quo* (Holmes and Knight 1994). From the 1980s, Aboriginal, mining, conservation and recreational groups expressed interest in the ownership, use, and management of pastoral leases, bringing further changes (Holmes 2000b).

In the 1990s, the rights of traditional owners to pastoral leasehold land were formally recognised. In 1996, the High Court, in its *Wik* judgement, found that pastoral leases were a creation of statute and the rights and obligations that accompany them did not derive from common law principles. Rather they should be determined by reference to the terms of the particular lease and statute under which it was granted. There was no legislative intention to confer rights of exclusive possession on lessees and pastoral leases did not necessarily extinguish native title (AGS 1997). This ruling followed the earlier *Mabo* (1992) case and the *Native Title Act 1993* (Cwlth), and was subsequently ratified in the *Native Title Amendment Act 1998* (Cwlth) (see section 3.5).

A primary focus of modern administration and management of pastoral leases is sustainable land management. Some jurisdictions, particularly South Australia and the Northern Territory, have conducted resource appraisals, undertaken rangeland monitoring, promoted property management plans, required reductions in stocking levels and developed protocols on public access (Holmes 2000b).

Rangeland monitoring is an integral part of achieving sustainable land management. For example, monitoring can provide important information about the underlying resource base and the impact of pressures on it to improve land management outcomes. Until recently, rangeland monitoring in Australia has relied upon

ground-based data collection, focusing on pasture response to grazing pressure with only limited biodiversity monitoring (National Land and Water Resources Audit 2001). The development of innovative satellite monitoring techniques, such as the Statewide Landcover and Trees (SLATS) program in Queensland, should enable better monitoring of land condition and biodiversity.

The Queensland Department of Natural Resources and Mines (DNRM) has observed:

> PMP [property management plan] approaches, recognising longer term management needs and responses to the range of risks (eg market and climate), are increasingly being seen by government as a link between proactive property management approaches and the achievement of agreed outcomes — thus their application in vegetation and water management approaches. (DNRM, pers. comm., 29 April 2002)

Six distinct phases in the evolution of pastoral leases as policy instruments can be identified (see box 1.2). The chronology in the nineteenth century is linked to the development of New South Wales legislation, but similar trends can be identified in other jurisdictions (Holmes 2000a).

Box 1.2 **Pastoral leases as policy instruments**

The six phases of the use of pastoral leases as policy instruments are:

1. Managing the pastoral frontier (1847 – 1861) — pastoral leases provided temporary low-cost access for early pastoralists while preserving future options on land allocation and use;
2. 'Unlocking the land' and facilitating closer settlement (1861 – 1884) — pastoral leases enabled the development of smaller holdings under specified conditions;
3. Progressive closer settlement (1884 – 1950s) — the sequential, managed subdivision of pastoral leases into family-sized holdings;
4. Policy vacuum and clientelism (1950s – 1970s) — no clear policy function; tinkering with the system and responding to lessees' concerns about tenure upgrading; reduced rentals and other concessions;
5. Sustainability, existence values and multiple use (1980s – 1996) — emerging use of rangeland monitoring; sustainable use; conservation of biodiversity and controlled public access; and
6. Coexistence (1997 – present) — settlement of native title claims and recognition of the practicalities of coexisting titles; ongoing involvement with issues in phase five (above) including sustainability and multiple use.

Source: Holmes (2000a).

As the policy intentions of governments have changed over time from controlling land settlement and development to sustainable land management — the stated objectives of land management legislation have also changed. For example, the broad objectives of the Queensland legislation have changed as follows:

- from 1859 until 1994 the primary focus of land management legislation was to support a policy of closer settlement and the development of land for grazing and agriculture. The sale and leasing of land also generated State revenue. The land laws of the State were consolidated five times up until 1910 when the Queensland *Land Act 1910* was promulgated (DNR 1998);
- the Queensland *Land Act 1962* reduced the number of tenures or classes of tenure from 29 to 17 (DNR 1998). The Act consolidated the administration of pastoral leases and facilitated the development of the State — this resulted in extensive freeholding in the closely settled areas; and
- the Queensland *Land Act 1994* changed the focus of land legislation by establishing a series of principles for State land. These include sustainable use and development of resources, evaluation of land on the basis of capability, opportunities and values, and protecting areas and features of environmental and cultural value (see s. 4, Queensland *Land Act 1994*) (DNRM 2001).

Reviews of pastoral lease administration

At various times, individual jurisdictions in Australia have reviewed the administration and management of pastoral leases. In commenting on a series of State and Territory inquiries between 1979 and 1985, Young (1987) observed that for each of the inquiries a dissenting report was produced. Young (1987) also highlighted the complexity of the issues surrounding the management of pastoral leases. More recently, there have been reviews in Western Australia (1997), and New South Wales (2000).

The Chairman of the New South Wales Western Lands Review observed that:

> The Western Lands Act [1901] has become increasingly redundant because other State-wide Acts overlap its previous exclusive preserve, and because of a lack of legal and legislative clarity. The Act lacks a clear set of objectives. There is also a lack of resources and capacity to deal with demands, and too much rigidity with many parts of the Act, despite many changes having been made. (Hyder Consulting 2000, p. iii)

In response to the Western Lands Review, a number of changes to the *Western Lands Act 1901* have been proposed by the New South Wales Minister for Land and Water Conservation. The main proposals include (Aquilina 2002):

- the legal recognition of existing roads with the Government to assume legal liability for motor vehicle accidents on these roads;

- the establishment of a legal access system;
- the ability to convert agriculture leases to freehold;
- the removal or updating of obsolete provisions;
- the creation of a Western Lands Advisory Council; and
- the provision for a new lease rental system — with a new approach to setting and reviewing rents for Western Lands leases (see section 3.6).

In Queensland, in late 2001, DNRM released *Managing State Rural Leasehold Land: a discussion paper*. A range of pastoral lease issues are examined in the discussion paper and DNRM intends to develop a blueprint for the future direction and management of Queensland's rural leasehold land (DNRM 2001). AgForce, the Queensland pastoral industry's peak representative body, submitted to the DNRM review that:

> There is a strong view that the current leasehold system is out-dated. Furthermore that the fragmented nature of the State's tenure system has worked against positive environmental and socio-economic outcomes … . (AgForce 2002a, p. 2)

The review of lease administration arrangements has also been proposed in other reports, such as the Industry Commission's Inquiry into Ecologically Sustainable Land Management (IC 1998) and the *National Principles and Guidelines for Rangelands Management* (ANZECC and ARMCANZ 1999).

Changes to land management legislation have been directly influenced by the State-based reviews and evaluations of the pastoral lease arrangements. The reviews have usually resulted in legislative reform with substantially rewritten legislation (Holmes 1999a). The State-based reviews have included some discussion of how to better recognise and facilitate non-pastoral land uses. However, the focus on pastoralism and the use of leases and conditions that facilitate and support pastoral land use have largely been retained. In general, the various reviews of pastoral lease arrangements have:

> … led to land administrators in most states constantly reaffirming two principles:
>
> - A pastoral lease is for pastoral purposes only, but appropriate secondary activities may be approved.
> - Freeholding of pastoral land is not available save in Queensland [and New Zealand], but small land parcels can be transferred into more intensive uses through transitional tenures. (Holmes 1999a, p. 8)

These two principles and the maintenance of pastoral leases and conditions have implications for the emergence of non-pastoral land uses. ANZECC and ARMCANZ have also observed that:

> There is a significant lack of consistency, even within regions, of lease conditions, including the obligations of both lessee and lessor. There is also a wide range of legislation and regulations covering, for example, access, use and management of rangelands, and its natural resources, in relation to environmental and heritage values, and commercial activities. Increased clarity of roles and responsibilities would increase the efficiency of administration by Government as well as assist rangeland managers and users. (ANZECC and ARMCANZ 1999, p. 15)

A central theme that emerges from the reviews, and other sources, is that there are various pressures on current land uses and administrative arrangements. A key issue is the low or variable profitability of some pastoral leases, and the potential for diversification to supplement pastoral income. A related issue is the increasing demand for non-pastoral land uses that require changes to the main purpose of a lease and lease conditions. The extent to which this can occur under current pastoral lease arrangements is explored in chapter 3.

Pastoral leases in New Zealand

From around 1000 AD, Polynesians arrived and settled throughout Aotearoa/New Zealand. Sometime in the seventeenth century, Ngai Tahu migrated from the North Island to the South Island, and through inter-marriage and conquest, merged with the resident Waitaha and Kati Mamoe tribes to form the Ngai Tahu tribe as it is known today (Te Runanga o Ngai Tahu 2000). Ngai Tahu hold the rangatiratanga (chieftainship) and manawhenua (customary rights) over most of the South Island and the high country.

Following the arrival of European settlers, extensive pastoralism was undertaken on large holdings in the high country from the 1850s. Stock numbers reached a peak around the 1890s, then declined and continued to fall until the 1950s — mainly because of land degradation, and the impacts from pests and weeds (South Island High Country Committee of Federated Farmers 2001).

The *Land Act 1948* was introduced in an attempt to reduce the degradation and erosion of the South Island high country and improve land management (Working Party on Sustainable Land Management 1994). In the high country, pastoral farming was regarded as the best use of the land and the emphasis was on the 'productive' values of the land (Carter 1999). The *Land Act 1948* supported the settlement and development of the pastoral leases and provided greater security of tenure to lessees. A pastoral lease entitled the holder to the exclusive right of pasturage over the land comprised in the lease and a perpetual right of renewal for terms of 33 years.

From the 1960s, various government-supported land retirement schemes were implemented to surrender high altitude lands from grazing in order to maintain soil and water values (Working Party on Sustainable Land Management 1994). Then, from the early 1980s, there was a series of initiatives over a period of 15 years to amend the *Land Act 1948* (MFE 1997).

In 1994, the government-appointed Working Party on Sustainable Land Management conducted the South Island high country review. The Working Party recommended that, among other things, the *Land Act 1948* be amended to incorporate sustainable land management concepts and to strengthen land user incentives. The Working Party also recommended a tenure review process whereby areas of conservation importance could be targeted for protection, and areas of no conservation importance could be sold to lessees as freehold land (Working Party on Sustainable Land Management 1994).

Tenure review was started in the early 1990s under the *Land Act 1948* (LINZ 1999). The *Crown Pastoral Land Act 1998* (CPL Act) created a new process for reviewing the tenure of pastoral leases leading to the freeholding of land with commercial value. The CPL Act also created a new regime for the consideration of applications for discretionary consents for non-pastoral uses, such as cropping, cultivation, top dressing, burning of vegetation, forestry and tourism.

Government administration and management of pastoral leases is covered by the Treaty of Waitangi. As part of the 1998 settlement of their claim under the Treaty of Waitangi, Ngai Tahu, in the national interest, relinquished its interest in the pastoral leases — this was to allow the Government to implement reform of the pastoral leases through the tenure review process. The Government, in recognition of Ngai Tahu's action, agreed to purchase three pastoral leases for the benefit of Ngai Tahu. The tribe then gifted certain mountainous areas in those properties to the Government to hold and manage as conservation areas on behalf of the people of New Zealand. Surrounding land with high conservation values was also leased to the Government at a nominal rental (OTS 1999).

Ngai Tahu has statutory rights to be consulted about tenure review proposals and other matters that may result in adverse affects on significant places or resources that are of value to the tribe — for example, under the *Crown Pastoral Land Act 1998* and the *Resource Management Act 1991*.

Changing objectives in Australia and New Zealand

In both Australia and New Zealand, pastoral lease arrangements have evolved as an administrative and prescriptive approach to land management. The initial objective

was to control early pastoral activity, but then governments used pastoral lease tenure to facilitate land development and closer settlement. More recently, the primary objective has shifted to ecologically sustainable land management and maintenance of current land uses. The raising of cattle and/or sheep still appears to be seen as the most appropriate or socially worthwhile land use in these areas, as reflected in the administrative arrangements.

2 Land use on pastoral leases

Pastoralism is the dominant land use in Australia's rangelands and is characterised by the grazing of sheep and cattle with some limited cropping activities. The operating characteristics of farm businesses with pastoral leases vary across jurisdictions according to: location; seasonal conditions; the size of the pastoral lease and the management structure.

In recent years, there has been a growing interest in non-pastoral uses of the land from a diverse range of user groups. These include pastoralists wishing to take advantage of diversification opportunities, and potential lessees, such as private conservation groups, wishing to manage properties for purposes distinct from pastoralism.

This chapter first describes the operating characteristics of farm businesses with pastoral leases, and then discusses the type and extent of non-pastoral uses that are occurring.

2.1 Operating characteristics of farm businesses with pastoral leases

Data from the ABARE Australian Agricultural and Grazing Industry Survey (AAGIS) can be used to provide an overview of operating characteristics of farm businesses with pastoral leases. AAGIS provides a broad range of information on the current (and historical) economic performance of farm business units in the rural sector.

The best available AAGIS data specification for farm businesses with pastoral leases is farm businesses with a long-term Crown lease in the pastoral zone. AAGIS data are grouped into three zones — pastoral, wheat/sheep and high rainfall. More than 95 per cent of pastoral leasehold land is classified as occurring within the pastoral zone, which includes most of the northern savannas, and the arid and semiarid regions of Australia (see ABARE 2001 and Geoscience Australia 2002). Although a small number of farms with pastoral leases are located in the wheat/sheep and high rainfall zones, these could not be distinguished from the large

number of farm businesses holding other types of long-term Crown lease, including forestry leases. Therefore, only data for the pastoral zone is used in this section.

Physical characteristics

A distinguishing characteristic of farm businesses with a long-term Crown lease in the pastoral zone is the type of management structure. The data presented here is grouped according to 'family' or 'corporate' enterprises. The corporate farms or stations are typically part of much larger pastoral companies (see box 2.1).

Box 2.1 Pastoral companies and pastoral leases

One management approach used by the larger corporate pastoral companies on pastoral leases involves breeding cattle in the north of Australia (Queensland and Northern Territory), and then moving them south to the 'channel country' and/or to the central highlands of Queensland to be fattened on grass or in feedlots. The natural herbage of the 'channel country' that flourishes in autumn and winter from low-level flooding provides natural cattle growing and fattening capacity. Some companies target the live export trade and stock are finished in feedlots in the market of destination.

Two examples of pastoral companies are Stanbroke Pastoral Company Pty Ltd and the Australian Agricultural Company (AACo).

Stanbroke Pastoral Company Pty Ltd

Stanbroke Pastoral Company Pty Ltd is Australia's largest beef producer with over 12.5 million hectares and a cattle herd in excess of 550 000. Stanbroke manages some 27 properties in tropical regions of Northern Australia and employs some 400 permanent staff. Most of the 12.5 million hectares is leasehold, with only 30 000 hectares of freehold land. Approximately 98 per cent of the land is managed in its natural state. The remaining 2 per cent is improved pasture and cropped land, and is used for the production of beef cattle.

Australian Agricultural Company

The AACo is the second largest beef cattle company in Australia with around 350 staff running over 400 000 cattle. The 18 AACo cattle stations — which cover approximately 6.5 million hectares or 1 per cent of the Australian land mass — are spread from the Northern Territory through to Far North and Central Queensland. The land is primarily leasehold apart from 152 000 hectares of freehold. Much of the land is in its natural state with a small proportion being improved pasture and cropped land for the production of beef cattle.

Sources: AACo (2002a); Gatenby (1999); Stanbroke Pastoral Company (2002).

The average size of holdings and the stocking mix varies significantly across jurisdictions depending on the location and management structure (see table 2.1).

Table 2.1 **Pastoral zone farms with long-term Crown leases: 'average per farm' size and stock numbers, weighted average[a], 1997-98 to 1999-2000**

Jurisdiction	*Farm structure*	*Size (hectares)*	*Sheep numbers*	*Beef cattle numbers*
New South Wales	Family	22 375	4 600	209
	Corporate	na	na	na
Queensland	Family	37 311	3 544	1 952
	Corporate	519 248	na	14 729
South Australia	Family	65 090	4 460	329
	Corporate	na	na	na
Western Australia	Family	218 133	7 018	1 444
	Corporate	453 682	1 100	11 101
Northern Territory	Family	270 408	na	4 647
	Corporate	473 269	na	17 084

na not available. **a** Weighted by the AAGIS estimated population for each year included in the average.

Source: ABARE Australian Agricultural and Grazing Industry Survey.

ABARE survey data indicate that the average size of pastoral lease holdings of corporate enterprises is similar across Queensland, Western Australia and the Northern Territory at around 500 000 hectares. These enterprises rely predominantly on the farming of beef cattle.

The average size of family holdings varies significantly across jurisdictions, from an average of 22 000 hectares in New South Wales to over 200 000 hectares in Western Australia and the Northern Territory.

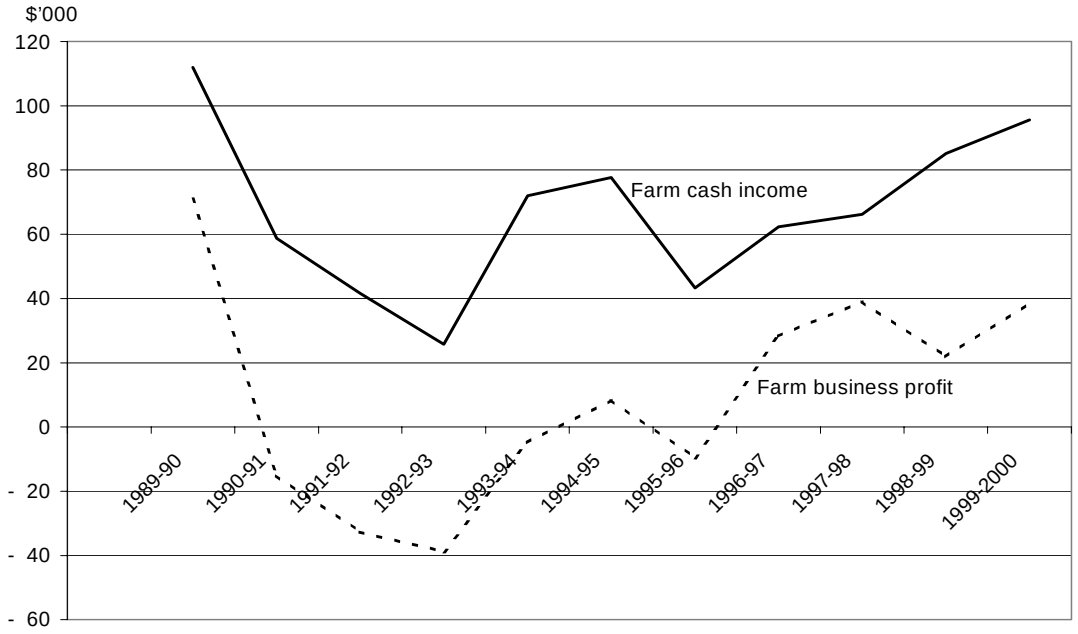
The patterns of stocking vary significantly both across and within jurisdictions. New South Wales and South Australian enterprises farm mainly sheep, while Queensland and Western Australian enterprises farm mainly sheep in the south and beef cattle in the north. Enterprises in the Northern Territory farm predominantly beef cattle.

Farm returns

Overall, average farm cash income and farm business profit were variable through the decade to 2000 (see figure 2.1). This is due to a range of factors, including seasonal conditions and commodity prices. There were declines in income and profit through the early 1990s and a second smaller decline in the mid-1990s. While the economic returns from pastoral properties have been affected by the declining

terms of trade for pastoral industries generally, in recent years, good seasonal conditions and a steady rise in beef cattle prices have lead to improved income and profitability (ABARE 2000) (see figure 2.1).

Figure 2.1 **Pastoral zone farms with long-term Crown leases: average farm cash income[a] and farm business profit[b], 1989-90 to 1999-2000**



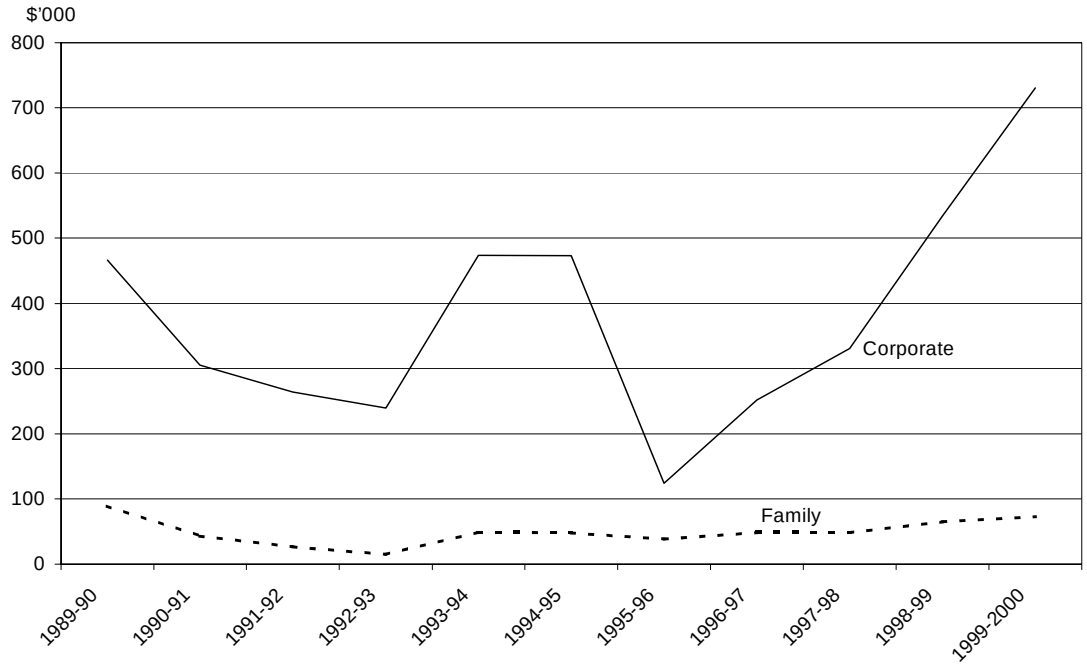
a Farm cash income is defined as the difference between total cash receipts and total cash costs. **b** Farm business profit is defined as farm cash income plus buildup in trading stocks, less depreciation and the imputed value of the owner manager, partner(s) and family labour.

Source: ABARE Australian Agricultural and Grazing Industry Survey.

In 1999-2000, average farm cash income across all farms (both corporate and family) was $95 620, more than doubling since 1995-96. Through the beginning of 2002, beef cattle prices were at record levels and wool prices at their highest level for a decade — cattle prices have doubled in the five years to 2002 (Wyatt 2002).

The composition and distribution of farm cash income can be further broken down between the types of management structure under which the farm business operates. The larger 'corporate' farms are able to generate higher farm cash income through size and resource advantages (see box 2.1 and figure 2.2).

Figure 2.2 **Average farm cash income of 'corporate' and 'family' farms with long-term Crown leases, 1989-90 to 1999-2000**



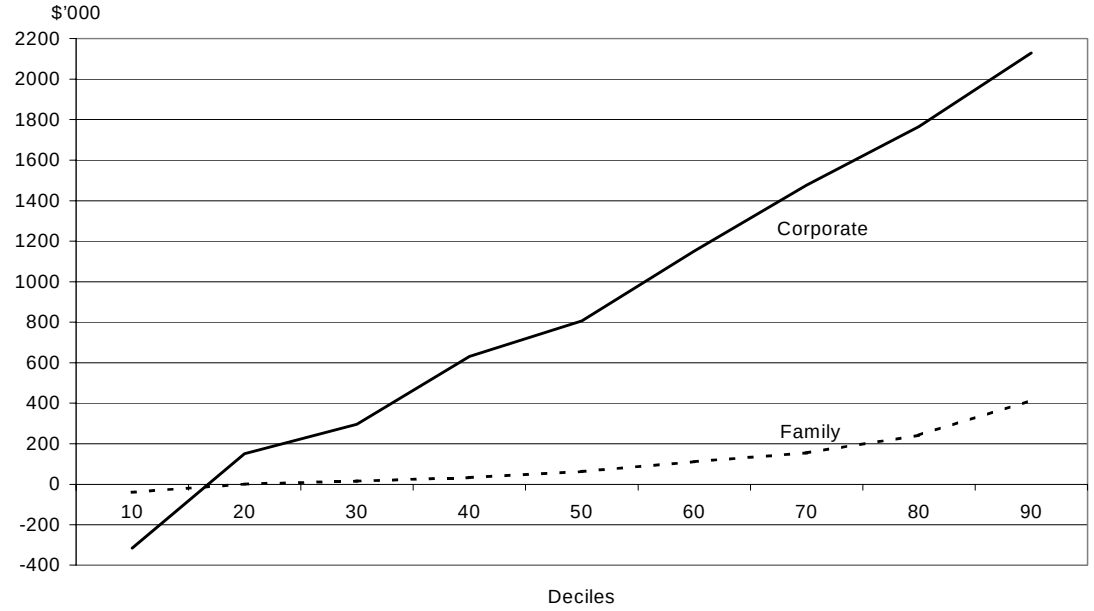
Source: ABARE Australian Agricultural and Grazing Industry Survey.

Farm cash income for the corporate (predominantly beef cattle) farms rose rapidly in the late 1990s, as these farms were able to take advantage of good seasonal conditions and improving prices for beef cattle (ABARE 2001). Significant growth in the live cattle trade throughout the 1990s also contributed to income improvements for farms in the beef pastoral zone (Riley et al. 2001). Since the mid-1990s, farm cash income for family farm businesses also rose, although not as rapidly as for corporate farm businesses. This partly reflects the higher sheep to cattle ratio for family properties (see table 2.1), and generally lower returns from wool and sheep and lamb sales in this period.

The distribution of farm cash income also differs significantly between corporate and family farms (see figure 2.3).

The distribution of farm cash income for family farms in 1999-2000 indicates that a relatively small number of farms accounted for a high proportion of overall income, with the upper 20 per cent of farms earning more than $200 000 and the lower 40 per cent of farms earning around $30 000 or less.

Figure 2.3 **Farm cash income distribution of 'corporate' and 'family' farms with long-term Crown leases in deciles, 1999-2000**



Source: ABARE Australian Agricultural and Grazing Industry Survey.

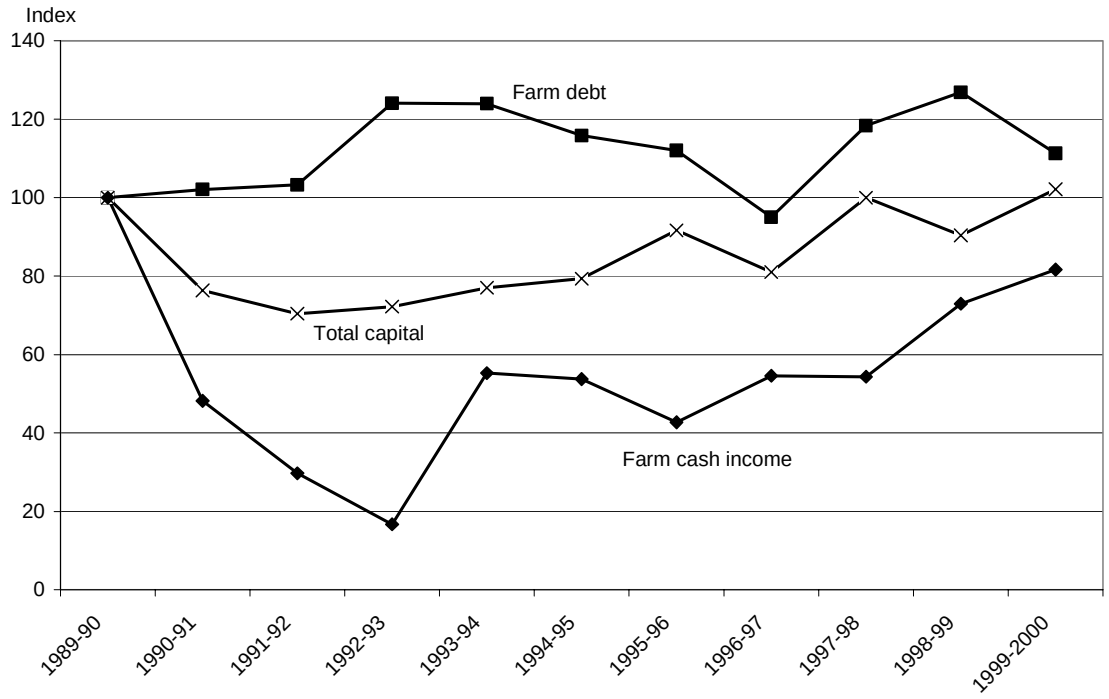
For corporate farms in 1999-2000, the upper 40 per cent of farms had income of one million dollars or greater with the bottom 30 per cent having incomes of less than $300 000. The broad distribution of income for corporate farms may be partly explained by the sample, including farms at different stages of their production cycle (ABARE, pers. comm., 2 April 2002). The timing of production and the scale of operations of corporate farms may vary significantly, depending on factors such as seasonal conditions and whether the farm is part of a larger pastoral company (see box 2.1).

For changes in farm debt and investment over the decade to 1999-2000, investment by family farms in the pastoral zone has broadly followed movements in farm cash income (see figure 2.4). However, through the early 1990s, there was a significant level of disinvestment as farms sold assets and attempted to reduce farm debt (Riley et al. 2001).

Debt levels fell over the period 1993-94 to 1996-97. In 1998-99, rises in farm cash income, combined with lower interest rates, encouraged new investment in land, cattle and equipment. Some reduction in farm debt occurred in 1999-2000, as farm cash income continued its upward trend.

Figure 2.4 **Farm debt[a], capital[b] and income for family farms[c] with long-term Crown leases, 1989-90 to 1999-00**

Index (1989-99 = 100)



a Farm debt is defined as the total amount of debt for the farm business as at 30 June. **b** Total capital is defined as the capital value of land and improvements including livestock, plant and equipment. **c** Information for corporate farms is not available.

Source: ABARE Australian Agricultural and Grazing Industry Survey.

2.2 Non-pastoral land uses

Non-pastoral land uses may occur on a pastoral lease through diversification and/or through a change in the primary land use — where this is permitted by pastoral lease arrangements (see chapter 3). Diversification involves the complementary use of part of a pastoral lease, such as the development of a feedlot or farmstay tourism, where pastoralism remains the dominant activity. A number of these activities may occur at the same time on a pastoral lease. A change in the primary land use involves a change from pastoralism to some other activity, such as ecotourism and conservation of biodiversity.

Where native title is applicable, non-pastoral land uses must be consistent with the *Native Title Act 1993* (Cwlth) (see section 3.5). As well as complying with pastoral lease and native title arrangements, a non-pastoral land use would also need to comply with other legislative requirements; for example, local planning controls and vegetation clearance controls.

Diversification and/or a change in primary land use on pastoral leases may contribute to more ecologically sustainable development in the rangelands. However, if not carefully managed, non-pastoral land uses could lead to less ecologically sustainable development; for example, through overgrazing by non-conventional livestock, such as goats or camels.

The Industry Commission's Inquiry into Ecologically Sustainable Land Management considered that:

> Pastoralists who are able to diversify into other activities may be able to maintain or even increase income while at the same time reducing the pressure on the fragile environment which prevails in the rangelands. (IC 1998, p. 374)

Similarly, the *National Principles and Guidelines for Rangelands Management* recognised that business diversification and emerging industries, such as tourism or bush foods (including commercial use of native wildlife), 'may increase viability and so reduce the demand on natural resources leading to positive environmental effects' (ANZECC and ARMCANZ 1999, p. 9). A recommendation in the national rangelands strategy stated that:

> Governments and communities should:
>
> - encourage rangeland businesses to manage change through promoting opportunities for diversification, multiple use and alternative resource use. Where land is no longer suitable for current or alternative commercial use, adjustment strategies may include acquisition for alternative purposes such as nature conservation;
> - develop mechanisms for the restoration and future management of degraded lands; and
> - promote opportunities for alternative or multiple use of areas held as a common resource, consistent with the principles of ecologically sustainable management. (ANZECC and ARMCANZ 1999, p. 14)

While diversification or a change in primary land use may be an option on some pastoral leases, there may be limited commercial opportunities for non-pastoral land uses on remote pastoral leases, and/or on pastoral leases that do not have scenic landscapes, significant native wildlife or heritage attractions. On these leases, the options for non-pastoral land use may be limited to sustainable use of native wildlife and/or conservation of biodiversity.

Other factors may also limit the emergence of non-pastoral land uses. For example, the *National Principles and Guidelines for Rangelands Management* recognised that:

> … matters such as land tenure arrangements, access to flexible financing, appropriate infrastructure improvements, identification and development of markets and access to information and skills and services, need to be addressed if a wider array of economic opportunities is to be realised. (ANZECC and ARMCANZ 1999, p. 4)

Diversification on a pastoral lease

Diversification of Australia's rangelands was supported by a number of participants in the Industry Commission's 1998 Inquiry into Ecologically Sustainable Land Management (IC 1998). For example, the Central Land Council informed the Inquiry that Aboriginal groups had been purchasing pastoral properties, but did not see the long-term future of the properties solely in terms of pastoralism. The Land Council believed that:

> … activities such as tourism, emu farming, feral animal harvesting, bush food production, horticulture, seed collection for revegetation, conservation management and other ventures will be viable alternative or complementary land uses. (Central Land Council 1997, p. 8)

Some lessees have expressed interest in feral animal harvesting of camels in the Northern Territory (see Adams 2001), and of goats in Western Australia and South Australia.

Other examples of diversification may include Aboriginal traditional use, forestry development, aquaculture, the development of feedlots, farming of non-conventional livestock, sustainable use of native wildlife, recreational activities, and documentary- and film-making. Some examples of diversification are examined in more detail below.

Sustainable use of native wildlife

Sustainable use of native wildlife can enable the private sector both to obtain financial returns and to contribute to conservation of biodiversity. Sustainable use involves the use of a species and/or ecosystem within the capacity of the species, ecosystem and bioregion for renewal or regeneration. There are a number of Australian industries based on wild harvest or farming of native wildlife. Examples include, sustainable use of native forests, grasslands, wildflowers, kangaroos, crocodiles and emus (Senate Rural and Regional Affairs and Transport References Committee 1998).

There can be both ecological and economic advantages from undertaking sustainable use of native wildlife. Australia is, for the most part, better suited to production of indigenous species than exotic species — indigenous species have co-evolved with their habitat and are better adapted to environmental constraints and thus may represent a more benign form of land use. Sustainable use of native wildlife could replace conventional agricultural practices, partially or totally, with activities that would allow natural habitats to recover while still providing an

income to landowners (Senate Rural and Regional Affairs and Transport References Committee 1998).

An issue with sustainable use of native animals is whether this is compatible with animal welfare and other ethical concerns. The Industry Commission Inquiry into Ecologically Sustainable Land Management acknowledged the seriousness with which many who oppose commercialisation of native animals view this issue, and stated that 'some views, like ethical views, are not amenable to compromise' (IC 1998, p. 315). However, the Commission concluded that a blanket regulatory ban on the use of native animals in itself provided no safeguard to protect species, and that the real issue raised in many concerns was the effectiveness of the regulatory regime for the conservation of native animals.

In addition to the pastoral lease arrangements considered in this paper, sustainable use on pastoral leases may be unduly constrained by regulatory frameworks for the conservation of native wildlife (for example, see PC 2001a, 2001b). A State or Territory permit is often required to farm or harvest native wildlife, and a permit is usually required from the Commonwealth prior to the export of any native wildlife or products thereof. A key issue is whether captive-bred or domesticated native animal and plant species should be treated any differently from domesticated exotic species in terms of harvesting, use, trade and export controls.

Tourism on pastoral leases

The importance of tourism to pastoral leases and outback Australia is increasing, as rural communities and businesses search for new and innovative ways to increase revenue. Tourism has the potential to increase employment opportunities, and help level out seasonality of labour and income in rural and regional communities that have traditionally relied on primary industry (ANZECC and ARMCANZ 1999; IC 1998).

The *National Principles and Guidelines for Rangelands Management* recognised that:

> Tourism can play an important role in the promotion and protection of cultural and heritage assets as it enables people to better understand the environment which in turn creates a greater awareness of the importance of rangelands, both from a historical and present-day perspective. In particular, ecotourism, which involves education and interpretation of the environment to promote ecological sustainability, has a major role to play in the future use and development of the rangelands. (ANZECC and ARMCANZ 1999, p. 21)

There may be opportunities for a variety of tourism approaches, such as agricultural tourism and corporate tourism, as part of the diversification of pastoral land use.

Ecotourism (or nature-based tourism) may also be undertaken on a pastoral lease, but this may involve a change of primary land use rather than diversification.

Two categories of agricultural tourism which could be relevant on pastoral leases are:

- farmstays, which involve tourists living and sharing meals with the farm family and experiencing farm activities; and
- agribusiness tours, which involve technical visits to specialised farms (IC 1998).

Some corporate pastoral companies are developing tourism ventures on their properties. For example, the Australian Agricultural Company (see box 2.1) and R. M. Williams Holdings Limited recently announced the creation of a joint venture company to develop and operate tours to outback Australia. The primary focus of the new business will be on high-end international tourism as well as corporate groups (AACo 2002b).

In South Australia, pastoralists in the Flinders Ranges have adopted alternative land uses. Often the lessees have converted the shearing quarters on the smaller sheep properties into tourist accommodation (South Australia Pastoral Board Secretariat, pers. comm., 12 December 2001).

Beyond diversification: changing land use

A change in land use may occur on a pastoral lease where pastoralism is replaced by other activities, such as forestry, ecotourism, sustainable use of native wildlife and/or conservation of biodiversity.

These activities may not be complementary to pastoralism and may be contrary to the objectives of existing land management legislation. In such instances, lessees may be required to alter the underlying purpose of a lease to pursue their activities. How this may occur under the current institutional arrangements is discussed in chapter 3. Where native title is applicable, a change of land use on a pastoral lease must be consistent with native title arrangements (see section 3.5).

Conservation initiatives

The loss of biodiversity is a significant issue in Australia (SEAC 1996). Many species and habitats are poorly represented (or absent) from the public national reserve system. Given the extent of pastoral leases under private management in Australia, and the relatively limited extent and ecosystem coverage of public conservation reserves, there is considerable scope for private conservation of

biodiversity and dedicated conservation reserves on pastoral leases. Substantial conservation initiatives can also occur, for example, as part of broader developments on pastoral leases.

In recent years, a number of private conservation initiatives have been undertaken on pastoral leases. Non-profit conservation organisations such as the Australian Bush Heritage Fund (ABHF), the Australian Wildlife Conservancy (AWC) and Birds Australia, and commercial companies such as Earth Sanctuaries Ltd (ESL), have all undertaken conservation of biodiversity on pastoral leases (see box 2.2). Further private conservation initiatives are likely to occur on pastoral leases in the future.

Often, private conservation initiatives will be operated in association with ecotourism ventures. On the more remote pastoral leases, light aircraft are used to fly in tourists for upmarket holiday and safari packages.

A number of pastoral leases have also been bought by the Commonwealth and State governments, to add to the national reserve system. For example, in September 2001, the Commonwealth Government and Western Australian State Government announced the $5.7 million purchase of 13 pastoral leases and parts of 10 other leases in the Gascoyne-Murchison region of Western Australia. The pastoral leases consisted of various ecosystems and vegetation types that were poorly represented or not represented in the national reserve system. The land acquisitions provided cash injections for the pastoralists who sold the leases but remained on the land as contract managers. Some of the former pastoralists were also able to pursue other interests and earnings from nature-based tourism (Hill 2001).

In Western Australia, alternatives to direct purchase may in the future be considered including conservation agreements between the Department of Conservation and Land Management and lessees under s. 16A of the Western Australia *Conservation and Land Management Act 1984* (Western Australian Pastoral Lands Board, pers. comm., 5 June 2002).

Box 2.2 Private conservation initiatives on pastoral leases

Australian Bush Heritage Fund

The ABHF is a private non-profit conservation group. ABHF protects highly threatened and ecologically significant examples of Australia's wildlife habitats and plant communities by purchasing properties and by receiving bequests of private land. ABHF is funded mainly through public donations. ABHF has the lessee rights to Carnarvon Station — a 59 000 hectare pastoral lease in central Queensland. The property is managed as a conservation reserve and stocked with cattle to its long-term carrying capacity.

Australian Wildlife Conservancy

The AWC (formerly Fund for Wild Australia) is a Perth-based private non-profit conservation group that seeks to enhance and protect biodiversity through the purchase and management of properties of high conservation value. AWC is funded mainly through public donations but has also received funding from the Commonwealth Government's Natural Heritage Trust.

AWC has the lessee rights to three pastoral leases in Western Australia — Faure Island, a 5600 hectare Shark Bay property in a World Heritage Area; Mount Gibson Station, a 130 000 hectare property north of Perth; and Mornington Station, a 312 000 hectare property in the Kimberley region in the State's north-west. The properties are managed as conservation reserves and used for ecotourism. AWC is seeking funding to purchase the Mt Zero pastoral lease in Queensland. It is also in the process of purchasing four properties from Earth Sanctuaries Limited, including a grazing lease in western New South Wales (see below).

Birds Australia

Birds Australia is a private non-profit conservation group with the aim of contributing to the conservation, study and enjoyment of Australia's native birds and their habitats. It is funded through public donations but has also received funding from the Commonwealth Government's Natural Heritage Trust. Birds Australia has the lessee rights to two pastoral leases — Gluepot Station, a 54 390 hectare property in South Australia's Murray Mallee, and Newhaven Station, a 262 200 hectare property in the southern Northern Territory. Both properties are managed as conservation reserves.

Earth Sanctuaries Ltd

ESL is a publicly listed company that has conservation of wildlife as its primary goal. During 2002, ESL has been restructuring its business and is intending to sell most of its ten wildlife sanctuaries. ESL has the lessee rights to Scotia, a 65 000 hectare grazing lease in western New South Wales. The lease is managed for conservation and ecotourism purposes but is also stocked with livestock. Subject to shareholder approval, ESL intends to sell this property to AWC.

Sources: ABHF (2001); AWC (2002); BA (2000, 2001a, 2001b); ESL (2001); Australian Financial Review (2002).

Non-pastoral land use in New Zealand

In New Zealand, non-pastoral land use may occur through either tenure review or by obtaining a permit to undertake a non-pastoral activity such as cropping, forestry or tourism.

Tenure review involves the Government and a lessee negotiating an agreement whereby land with commercial production potential is freeholded, and land with high conservation values is protected and transferred to the public conservation estate (see section 3.4). By late 2001, reviews progressed primarily under the *Land Act 1948* had resulted in 112 467 hectares being freeholded, and a further 73 043 hectares being set aside for conservation purposes (Local Government and Environment Committee 2002) (see box 2.3).

As at May 2001, around 44 recreation permits had been granted for various recreational activities on pastoral leases (LINZ 2001).

Box 2.3 Examples of tenure review in New Zealand

In March 1994, 2735 hectares of the Waiorau pastoral lease in Otago was freeholded and 4018 hectares was transferred to the Department of Conservation to become a public conservation area. The land exchange protected conservation values and allowed the freehold owners to further develop their tourism and commercial ventures. These included Nordic cross-country skiing, and winter vehicle testing and tyre-testing by the car industry. Two conservation convenants were negotiated over parts of the freehold land to protect landscape values and historic sites. A recreation permit was issued over 400 hectares of the conservation land to facilitate the Nordic skiing.

In March 1996, around two-thirds (16 600 hectares) of the Earnscleugh pastoral lease in Otago was freeholded, while the balance (8060 hectares), mostly the higher altitude land, was set aside as a public conservation area. A number of covenants were negotiated over certain parts of the freehold land to protect landscape features and ensure public access. The public conservation area contained some of the most nationally significant high-altitude tussock grasslands, herbfields and wetlands, and is administered by the Department of Conservation. Special leases were issued over two of the conservation areas to allow for ongoing use of the land for grazing provided that monitoring of the vegetation indicated no adverse effects.

In February 1998, the Government purchased Camberleigh pastoral lease in Otago for over NZ$500 000. The property was joined with the neighbouring Glencreag pastoral lease and then split into a 900 hectare freehold sheep and cattle farm on the lower slopes, and a 1500 hectare public conservation area of mid to high altitude alpine vegetation. The new public conservation area borders an existing scenic reserve and is administered by the Department of Conservation.

Sources: Luxton (1998a); Marshall (1994; 1996).

2.3 Summary

- In Australia, the operating characteristics of farm businesses with pastoral leases vary across jurisdictions according to: location, seasonal conditions, the size of the pastoral lease and the management structure.
- Overall, average farm cash income and farm business profit for pastoral enterprises with Crown leases were variable through the decade to 2000. This is due to a range of factors, including seasonal conditions and commodity prices.
- Non-pastoral land uses may occur on a pastoral lease through diversification and/or through a change in the primary land use, where this is permitted by pastoral lease arrangements.
- Diversification and/or a change in primary land use on pastoral leases may contribute to more ecologically sustainable development in the Australian rangelands.
- While diversification or a change in primary land use may be an option on some pastoral leases, there may be limited commercial opportunities for non-pastoral land uses on remote pastoral leases, and/or on pastoral leases that do not have scenic landscapes, significant native wildlife or heritage attractions.

3 Pastoral lease arrangements and non-pastoral land use

Pastoral lease arrangements have developed over time to facilitate and support pastoralism, largely through prescriptive requirements for land use. Recently, there has been an increase in the demand for a range of non-pastoral land uses on land held under pastoral lease. While pastoralism is likely to remain the primary land use for many leases, it is timely to review the capacity of the current arrangements to facilitate non-pastoral land uses.

This chapter first examines the objectives of land management legislation with respect to non-pastoral land use. It then outlines and discusses the rights conferred by the lease purpose and conditions, and the operation of the lease conditions across jurisdictions. Further, it examines how non-pastoral land uses may occur under the current arrangements, and describes the relationship between native title and non-pastoral land use. Finally, the pastoral lease rental system, and its implications for pastoral and non-pastoral land uses, are examined.

3.1 The objectives of land management legislation

The broad intent and general approach of legislation can be identified through the long title, purpose and objectives.

Table 3.1 outlines the long title and objectives of the primary Australian and New Zealand land management legislation. In some jurisdictions, a range of objectives for the administration and management of pastoral leasehold land have been set out. For example, the Queensland, South Australian and Northern Territory objectives include the promotion of sustainable use of pastoral land, monitoring of the condition of the land, facilitation and support of pastoralism, recognition of the rights of Aborigines to follow traditional pursuits on pastoral land, and limited provision for public access. Many of these objectives are reflected and supported in the pastoral lease conditions (see section 3.3).

Table 3.1 **Long title and object of primary land management legislation**

Jurisdiction	*Long title and object of primary land management legislation*
NSW: *Western Lands Act 1901*	Long title: 'An Act to vest the management and control of that portion of New South Wales known as the Western Division in a Western Lands Commissioner; to grant extension of leases in the said division and tenant-right in certain improvements; and for all purposes necessary and incidental thereto.'
	No expressed object.
QLD: *Land Act 1994*	Long title: 'An Act to consolidate and amend the law relating to the administration and management of non-freehold land and deeds of grant in trust and the creation of freehold land, and for related purposes.'
	Object: land administered under this Act must be managed for the benefit of the people of Queensland by having regard to the following principles: sustainability; evaluation; development; community purpose; protection; consultation; and administration. The principles are further defined.
SA: *Pastoral Land Management and Conservation Act 1989*	Long title: 'An Act to make provision for the management and conservation of pastoral land; and for other purposes.'
	Object: to ensure that all pastoral land in the State is well managed and utilised prudently so that its renewable resources are maintained and its yield sustained; to provide for the effective monitoring of the condition of the land, the prevention of degradation of the land, and the rehabilitation of land in cases of damage; to provide a form of tenure of Crown land for pastoral purposes that is conducive to the economic viability of the pastoral industry; to recognise the right of Aborigines to follow traditional pursuits on pastoral land; and to provide the community with a system of access to and through pastoral land that finds a balance between pastoral and community interests.
WA: *Land Administration Act 1997*	Long title: 'An Act to consolidate and reform the law about Crown land and the compulsory acquisition of land generally, to repeal the Land Act 1933 and to provide for related matters.'
	No expressed object.
NT: *Pastoral Land Act 1992*	Long title: 'An Act to make provision for the conversion and granting of title to pastoral land and the administration, management and conservation of pastoral land, and for related purposes.'
	Object: to provide a form of tenure of Crown land that facilitates the sustainable use of land for pastoral purposes and the economic viability of the pastoral industry; to provide for the monitoring of the condition of pastoral land, the prevention or minimisation of degradation, and the rehabilitation of degraded land; to recognise the right of Aborigines to follow traditional pursuits on pastoral land; to provide reasonable public access across pastoral land; and to provide a procedure to establish Aboriginal community living areas on pastoral land.
NZ: *Land Act 1948*	Long title: An Act to consolidate and amend certain enactments of the Parliament of New Zealand relating to the lands of the Crown in New Zealand.
	No expressed object.
Crown Pastoral Land Act 1998	Long title: An Act: to establish a system for reviewing the tenure of Crown land held under certain perpetually renewable leases; to establish a system for determining how certain Crown land should be dealt with; and to provide for the administration of Crown pastoral land.
	Object expressed for part II: tenure review including: to promote the management of reviewable land in a way that is ecologically sustainable; to enable the protection of the significant inherent values of reviewable land; and to secure public access and provide for freehold disposal of land.

Sources: AustLII (2002); The Knowledge Basket (2002).

A clear objective for the administration and management of pastoral lease land is not apparent in other jurisdictions. For example, the long title of the Western Australian land management legislation relates to the administration of Crown land generally — Part 7 of the legislation specifically deals with pastoral leases. The New South Wales land management legislation has no stated objectives and the intent of the legislation is unclear from the long title. The long title of the New South Wales legislation indicates that the Act provides administrative arrangements for the Western Division and 'for all purposes necessary and incidental thereto'. The New South Wales Western Lands Review highlighted that:

> The void created by the lack of a clear legislative goal in the Western Lands Act … is commonly filled by the perspective of the observer. (Hyder Consulting 2000, p. 113)

Submissions to the New South Wales Western Lands Review suggested that the lack of clear objectives in the *Western Lands Act 1901* to guide lease management had seen the 'development of overly prescriptive lease conditions' (Hyder Consulting 2000, p. 105).

In response to the Western Lands Review, a number of objects for the *Western Lands Act 1901* have been proposed in the Western Lands Amendment Bill 2002:

> The objects of this Act are as follows:
>
> (a) to establish an appropriate system of land tenure for the Western Division,
>
> (b) to regulate the manner in which land in the Western Division may be dealt with,
>
> (c) to provide for the establishment of a formal access network, by means of roads and rights of way, in the Western Division,
>
> (d) to establish the rights and responsibilities of lessees and other persons with respect to the use of land in the Western Division,
>
> (e) to ensure that land in the Western Division is used in accordance with the principles of ecologically sustainable development referred to in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
>
> (f) to promote the social, economic and environmental interests of the Western Division,
>
> (g) to make other provision for the effective integration of land administration and natural resource management in the Western Division.

Generally, there is limited direct recognition of non-pastoral land uses within the Australian State and Territory land management legislation objectives. In contrast, the objectives often provide for the facilitation and support of pastoralism. For example, an objective of the South Australian legislation is 'to provide a form of tenure of Crown land for pastoral purposes that is conducive to the economic viability of the pastoral industry' (s. 4(c), South Australian *Pastoral Land Management and Conservation Act 1989*). Similarly, an objective of the Northern

Territory legislation is 'to provide a form of tenure of Crown land that facilitates the sustainable use of land for pastoral purposes and the economic viability of the pastoral industry' (s. 4(a), Northern Territory *Pastoral Land Act 1992*).

It is possible that some non-pastoral land uses may fall within objectives promoting the broader sustainable use and conservation of pastoral land. However, the broad intent of the legislative framework gives limited recognition to non-pastoral land uses. This is reflected in the limited capacity of the legislation to allow such uses to occur (see section 3.4).

There has been some reform of land management legislation in New Zealand, with the enactment of the *Crown Pastoral Land Act 1998* to complement the *Land Act 1948*. However, in 1999, Land Information New Zealand (LINZ) recommended to the Minister of Lands that a broader review of the *Land Act 1948* was required, with the aim of redefining its objectives where appropriate, reducing its complexity and making it more consistent with modern day Government objectives (LINZ 1999). LINZ observed that the *Land Act 1948* was 'complex and prescriptive' and reflected administrative philosophies which are now outmoded. A review of the need for, and statutory powers of, the Commissioner of Crown Lands was required. LINZ noted that the period of land settlement and development which the Act supported had passed. In addition, the Act reflected a level of involvement by government in land acquisition and development processes that no longer exists (LINZ 1999). This review of the *Land Act 1948* has yet to commence.

3.2 Pastoral lease purpose

A pastoral lease is issued for a specified time, area and purpose as a contract between 'the Crown' and the lessee.

Generally, with the exception of Queensland, a pastoral lease must be used for pastoral purposes — usually, the grazing of cattle and/or sheep. In Queensland, a lease issued for pastoral purposes may be used for both agricultural and grazing purposes (see table 3.2).

In South Australia, Western Australia and the Northern Territory, the legislation also indicates that pastoral purposes includes supplementary or ancillary uses, such as 'horticultural' activities and 'farm holidays' (see table 3.2).

Table 3.2 **Pastoral lease purpose**

Jurisdiction	*Purpose*
NSW: *Western Lands Act 1901*	General land management conditions set out that a lease must be used for pastoral purposes (s. 18D).
QLD*: Land Act 1994*	A lease must be used only for the purpose for which it was issued. and a term lease for pastoral purposes must be used only for agricultural or grazing purposes, or both (s. 153).
SA: *Pastoral Land Management and Conservation Act 1989*	General land management conditions set out that the lessee has an obligation not to use the land for any purpose other than pastoral purposes, except with the prior approval of the Pastoral Board (s. 22). A pastoral purpose means the pasturing of stock and other ancillary purposes (s. 3).
WA: *Land Administration Act 1997*	Pastoral land is not to be used other than for pastoral purposes without a permit (s. 106). Pastoral purposes means the commercial grazing of authorised stock; agricultural, horticultural or other supplementary uses of land related to grazing of authorised stock; and ancillary activities (s. 93).
NT: *Pastoral Land Act 1992*	General land management conditions set out that the lease must be used for pastoral purposes (s. 38). Pastoral purposes means the pasturing of stock for sustainable commercial use or agricultural or other non-dominant uses essential to, carried out in conjunction with, or inseparable from, the pastoral enterprise. This includes the production of agricultural products for use in stock feeding and pastoral based tourist activities, such as farm holidays (s. 4).
NZ: *Crown Pastoral Land Act 1948*	General conditions of pastoral tenure set out that the lease must be used for pastoral purposes (s. 4).

Sources: AustLII (2002); The Knowledge Basket (2002).

Generally, the objectives of the land management legislation and the lease purpose provide limited scope for non-pastoral land uses to occur, and this is reflected in the lease conditions. Non-pastoral land uses, such as ecotourism and conservation of native wildlife, may be inconsistent with the lease purpose and require the lease conditions and/or purpose of a lease to be changed. In such instances, lessees may pursue one of several options outlined in section 3.4 below.

3.3 Pastoral lease conditions

A range of conditions are attached to a pastoral lease to control land use. These set out the rights of both the lessee and 'the Crown', and the responsibilities of the lessee to undertake certain activities in a prescribed manner.

While the form of the legislation varies across jurisdictions, typical pastoral lease conditions include:

- *general conditions* — such as the term or length of the lease and the rental rate;

- *land management and use conditions* — such as the type and level of stocking, the maintenance of fencing and other infrastructure, and the lessee's broad responsibility to follow sound land management practices including a 'duty of care'; and

- *reservation conditions* — such as the rights of 'the Crown' to timber and soil, the rights of 'the Crown' to take back (resume) the land and the rights of public access.

Generally, lease conditions take a prescriptive approach to managing land use — for example, by specifying the type and level of stock that must be grazed (see below). The New South Wales Western Lands Review reported that:

> The Western Lands Act 1901, takes a prescriptive regulatory approach to the allocation, management and administration of leasehold land in the Western Division. (Hyder Consulting 2000, p. vi)

Prescriptive control of inputs or management processes can reduce flexibility and hinder the development of innovative and cost-effective responses by resource managers.

In order for regulation to be efficient and effective, it should, where possible, be specified in terms of performance goals or outcomes. An advantage of an outcome-based approach to regulation is that it provides flexibility, and can enable businesses and households to choose the most cost-effective ways of complying and adapting to changing circumstances (see Banks 2001). For example, a move to outcome-based lease conditions and monitoring of land condition may better assist ecologically sustainable land management, compared to prescribing the type and level of stock to be grazed (see below). Such outcome-based systems for the Australian rangelands are likely to require careful design and monitoring to assess and respond to any incremental changes in land condition — further research is required on this issue.

Other legislation, such as State and Commonwealth native title, conservation and land management legislation, forms part of the broader institutional framework within which leases operate. The relationship between native title legislation and non-pastoral land use is discussed in section 3.5.

General conditions

The general conditions provide the underlying structure of the lease agreement, covering the duration of the lease and the terms for renewal and the rental rate.

Lease term and renewal

Pastoral leases can be broadly categorised as either perpetual or term leases. Perpetual leases are issued in perpetuity with limited requirements for renewal. A term lease is issued for a defined period with no guarantee of renewal. The duration of a term lease and the provision for renewal varies significantly across jurisdictions (see table 3.3). New South Wales, Queensland and the Northern Territory can issue pastoral leases as either term or perpetual leases, while South Australia and Western Australia offer only term leases.

Table 3.3 **Pastoral lease term and renewals**

Jurisdiction	*Initial term*	*Renewal/extension*	*Term of renewal/extension*
NSW: *Western Lands Act 1901*	Up to 40 years	At any time	Up to 40 years
QLD: *Land Act 1994*	Up to 50 years	In last fifth of lease	Up to 50 years
SA: *Pastoral Land Management and Conservation Act 1989*	42 years	Rolling 14 year term	14 years
WA: *Land Administration Act 1997*	Up to 50 years[a]	Within last ten years	Up to 50 years
NT: *Pastoral Land Act 1992*	Up to 25 years	Before last year	Up to 25 years
NZ: *Land Act 1948*	33 years	Before last year	Perpetual right of 33 years

a In Western Australia, all existing leases expire on 30 June 2015 with the majority approved for immediate renewal for the same term as the existing lease.

Source: AustLII (2002).

Term leases vary from a maximum of 25 years in the Northern Territory to 50 years in Queensland and Western Australia. New Zealand's pastoral leases are for 33 year terms with perpetual rights of renewal for further 33 year terms.

Each jurisdiction has a defined process for lease renewal or extension for its term leases. Renewal or extensions are usually undertaken after a minimum period of the lease has expired, and subject to the lessee meeting land management conditions.

With the exception of South Australia, all term leases may be renewed or extended for the same period as the initial term of the lease (see table 3.3). In South Australia, the approach differs significantly, in that each lease is subject to assessment by the Pastoral Board every 14 years (see box 3.1) and, subject to meeting certain land management conditions, the lease is extended by 14 years to maintain the original term of 42 years.

Box 3.1 **Renewal of pastoral leases in South Australia**

The extension of the term of pastoral leases in South Australia is subject to a comprehensive review and assessment of the environmental condition of every pastoral lease. This is required under the *Pastoral Land Management and Conservation Act 1989*. The assessment gives a baseline of the environment conditions of leases and is used to recommend the stocking capacity for each lease. The first round of assessments was completed in 2000. This included the establishment of 5500 vegetation monitoring sites.

A key issue for the pastoralist in the assessment is the stock capacity recommendation as it may be less than the lease maximum. For example, it is not uncommon for the Board to offer a lease extension with a new maximum of 14 000 sheep on a property with an existing maximum of 20 000 sheep. In many cases this reflects unrealistic existing maximums. Where a lessee does not agree with the proposed new maximum, the Pastoral Board may further negotiate with the lessee. Those lessees that do not take up a lease offer will be assessed again by December 2004. Lessees that have taken up the offer are due for reassessment 14 years from the date the offer was accepted.

Source: South Australia Pastoral Board Secretariat, pers. comm., 20 March 2002.

In Queensland and Western Australia, lease renewal provisions include clauses that may allow part or all of an expiring term lease to be resumed for public purposes, such as conservation reserves (refer to the section on resumptions below). Currently, in New South Wales, the maximum area of land that can be withdrawn from a lease for public purposes is 80 hectares. However, there are proposals in the Western Lands Bill 2002 to remove this limit.

An issue that needs to be considered by governments in monitoring land condition and making decisions about lease renewal, is the impact that expectations or intentions of non-renewal may have on land management decisions and outcomes. For example, a lessee may have less incentive to manage the land if there is a reasonable expectation that a lease will not be renewed. Land management issues may also arise where a lessee decides not to renew a lease, and subsequently may have less incentive to manage the land prior to expiry of the term of a lease.

Rental system

Each jurisdiction administers its own system of rentals for pastoral leases. Rent is usually paid on an annual basis and is calculated as a percentage of unimproved capital value. The operation of the rental regime in each jurisdiction, and the implications for non-pastoral land use, and land use more generally, are discussed in section 3.6.

Concentration of ownership

Some jurisdictions have clauses within their land management legislation that may preclude the concentration of pastoral holdings above specified levels. For example, in Western Australia, s. 136 of the *Land Administration Act 1997* indicates that the Minister may refuse the transfer of a lease if the total pastoral holdings of an individual were to exceed 500 000 hectares. In the Northern Territory, similar legislation states that transfers may be refused for aggregations above 1.3 million hectares (refer to s. 34 of the *Pastoral Land Act 1992*). In contrast, there are no size limitations in South Australia on aggregations.

Land management and use conditions

The land management and use conditions in a pastoral lease control the type and level of activity that can occur.

Stocking

All pastoral leases have a stocking condition that prescribes the level and type of stock that must be grazed on the land. These stocking controls are the most fundamental condition of a lease in reflecting the lease purpose (see section 3.2 above).

Western Australia is the only jurisdiction that has a specific legislative provision to direct the level and type of stocking that is to occur on a lease — s. 111 of the *Land Administration Act 1997* indicates that:

> (1) The Board may from time to time determine the minimum and maximum numbers and the distribution of stock to be carried on land under a pastoral lease, based on its assessment of the sustainable carrying capacity of the land and having regard to seasonal factors, and the pastoral lessee must comply with such a determination.
>
> (2) A pastoral lessee must not cause or allow the agistment on land of stock of any kind, except with the permission in writing of the Board.
>
> Penalty: $5 000, and a daily penalty of $500.

In Western Australia, stocking levels are determined by the Pastoral Lands Board to ensure that commercially sustainable pastoral enterprises are achieved (subject to economic and ecological factors). Pastoral lessees must comply with such a determination (Department of Conservation and Land Management, pers. comm., 11 December 2000). In a recent issues paper, the Pastoral Lands Board sets out that the Board's 'Best Management Practice guidelines' include:

> … the provision for lower stocking rates on poor condition land, the adjustment of stocking rates in relation to country types and seasonal conditions and the exclusion from use of severely degraded and eroded land. (Pastoral Lands Board 2002, p. 9)

Other jurisdictions control stocking through the lease purpose and the general conditions for land management. For example, in South Australia, the land management conditions of a pastoral lease, as set out under s. 22(b) of the *Pastoral Land Management and Conservation Act 1989*, indicate that it is:

> (i) the lessee's obligation not to pasture (as part of the commercial enterprise under the lease) any species of animal on the land other than the species specified in the lease, except with the prior approval of the Board;
>
> (ii) 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; …

Controls on stocking directly reflect the lease purpose and may affect a range of non-pastoral land uses. For example, some activities, such as private conservation and ecotourism, may seek to lower stock numbers or even remove all stock. Other activities, such as the farming of non-conventional livestock, may seek to enclose and farm different species of animals, such as emus. The extent to which controls on stocking may be varied depends on the discretionary approval of the relevant managing authority (see section 3.4).

Maintenance of fencing and other infrastructure

To support the purpose of pastoralism, each pastoral lease includes a condition for the maintenance of fencing and other infrastructure. Lessees may be required to maintain existing infrastructure, such as fencing, watering points and stock holding sheds. For example, in South Australia, s. 22(b) of the *Pastoral Land Management and Conservation Act 1989*, indicates that it is:

> … (iv) the lessee's obligation to maintain existing fencing in a stockproof condition;
>
> (v) the lessee's obligation to maintain existing constructed stock watering points in proper working order …

In South Australia, in practice, the fencing condition has not been written into any new leases and is not enforced on existing leases (South Australia Pastoral Board Secretariat, pers. comm., 4 June 2002).

In other jurisdictions, as for stocking levels, fencing and infrastructure conditions may need to be varied for some types of non-pastoral activities. For example, if a property is to be destocked for non-pastoral land uses, such as conservation and ecotourism, watering points may need to be capped. This is to stop native wildlife

and feral animals, such as camels and horses, from accessing the water and overpopulating areas around the watering point (see Pople and Grigg 1998).

Land management practices and duty of care

Each jurisdiction requires lessees to operate a pastoral enterprise subject to meeting certain responsibilities with respect to the management of the land. The legislation sets out general duties, with property specific requirements negotiated between 'the Crown' and individual lessees.

New South Wales, South Australia, Western Australia, the Northern Territory and New Zealand describe the broad requirement for sound land management practices as a 'general duty' of pastoral lessees (refer to appendix A). For example, in South Australia, s. 7 of the *Pastoral Land Management and Conservation Act 1989* sets out that:

> It is the duty of a lessee throughout the term of a pastoral lease-
>
> (a) to carry out the enterprise under the lease in accordance with good land management practices; and
>
> (b) to prevent degradation of the land; and
>
> (c) to endeavour, within the limits of financial resources, to improve the condition of the land.

Section 199 of the Queensland *Land Act 1994* describes the land management responsibilities of lessees as a 'duty of care condition' where:

> All leases, licences and permits are subject to the condition that the lessee, licensee or permittee has the responsibility for a duty of care for the land.

In all jurisdictions, how to make a general duty or 'duty of care' operational is a critical issue. For example, in Queensland:

> … this duty of care needs to be clarified in consultation with stakeholders so that there is a clear understanding of the obligations it conveys. (DNRM 2001, p. 16)

Bates (2001) suggests that voluntary standards and codes of practice could be used to help achieve a statutory duty of care. In South Australia, Birds Australia have prepared a comprehensive property management and business plan for their Gluepot Station property as part of obtaining approval for their conservation-based activities (see box 2.2). This is one example of how a duty of care may be met for a non-pastoral land use.

Increasingly, property management plans are being used to link land management objectives to agreed environmental outcomes (see section 1.2).

Reservation conditions

Ownership of timber and soil

In all jurisdictions, on pastoral leases, 'the Crown' retains the ownership of timber and soil, which includes mineral rights. 'The Crown' may grant third party rights for timber and minerals subject to providing lessees with notice of intent.

This is an important condition given the impact that logging or mining may have on the environmental values of leased land. Although such activity may potentially only have a relatively minor impact on pastoral activities, this may not be the case for non-pastoral activities, such as ecotourism and private conservation.

Under the current arrangements in each jurisdiction, there appears to be limited scope for retiring timber and soil rights for pastoral leases. Before proceeding with an activity, lessees wishing to undertake non-pastoral activities may need to consider the potential for these rights to be exercised, and how this would affect their activity. In Queensland, the Australian Bush Heritage Fund (ABHF) is managing a pastoral lease — Carnarvon Station — for its conservation values (see box 2.2). Since the purchase in mid-2001, the Queensland Government has indicated its intention to grant third-party rights to some of the timber on the lease (DNRM, pers. comm., 8 December 2001).

Crown powers of resumption

Although infrequently exercised, resumption provisions can create uncertainty for those considering investments in non-pastoral activities. In all jurisdictions, 'the Crown' has the power to resume pastoral leases for a range of purposes, usually with a minimum of six months notice of intent. As for 'the Crown' rights to timber and soil, lessees may seek to clarify the position of the managing authority before committing to the purchase and use of the lease.

A lease may also be resumed for a number of specified purposes at the point when it is renewed. For example, in Western Australia, all pastoral leases expire on 30 June 2015 and require renewal. Section 143(6d) of the *Land Administration Act 1997* provides for exclusion of land for public purposes from renewed pastoral leases in 2015. Examples of public purposes include public works, conservation areas, national parks, nature reserves or other government purposes. Notice of any exclusion is required to be provided to lessees by 7 December 2002.

The Australian Wildlife Conservancy (AWC) (see box 2.2) has expressed concern that this provision could lead to its properties being resumed after they have been

identified and managed by the AWC as areas with high conservation values (AWC, pers. comm., 8 March 2001).

Access

Access provisions regulate the extent and manner to which the general public or specific groups or individuals can access land held under pastoral lease. The extent of provisions varies across jurisdictions and may include:

- rights for general public access — for example, in South Australia, s. 48(2) of the *Pastoral Land Management and Conservation Act 1989* indicates that:

  > … a person may, on giving oral or written notice to the lessee, travel across pastoral land (otherwise than on a public access route) by any means other than a motor vehicle, a horse or a camel and, in the course of so travelling, camp temporarily on the land.

- access to specific areas of public interest — for example, in Western Australia, s. 64(1) of the *Land Administration Act 1997* indicates that the Minister may declare a public access route:

  > … for the purpose of providing members of the public with access through Crown land to an area of recreational or tourist interest …

Lessees pursuing some types of non-pastoral activities may seek to restrict access. For example, Earth Sanctuaries Limited (see box 2.2), relies on feral-proof perimeter fences, and also the ability to control the level of human disturbance, to pursue its conservation and ecotourism objectives. This may be inconsistent with access provisions and is subject to approval by managing authorities.

The *Native Title Act 1993* (Cwlth) provides for access rights to pastoral leases for native title claimants or holders of native title for traditional activities, such as hunting, fishing and performing rites or other ceremonies (see section 3.5 below).

Holmes (1999b) discusses access provisions and opportunities to capture benefits from increases in demand for tourism and recreation — this may be provided by third party users, such as tour operators. Where multiple use is an option, effective access provisions are crucial to allowing third party users to conduct their activity, while protecting the rights of lessees (including indemnity from public liability), and the rights of native title holders.

A key element of effective access provisions is whether adequate procedures exist for dispute settlement between lessees and third party users. In the first instance, access rights will need to clearly set out third party property rights including conditions and responsibilities of access. Where disputes do arise, pastoral lease

arrangements will need to include transparent and well defined processes for dispute settlement.

3.4 Current approaches to non-pastoral land use

The extent to which the current arrangements may facilitate or constrain non-pastoral activities depends partly on the jurisdiction where the activity is to occur, and the type and level of the activity itself (see chapter 2).

Across jurisdictions, approaches that may be used to allow for non-pastoral land uses include changing lease conditions, issuing permits and changing tenure.

Generally, it can be argued that these approaches treat some non-pastoral land uses as special cases within the legislation. This lack of formal recognition may reflect the narrow and prescriptive nature of the pastoral lease arrangements.

Changing lease conditions

Several jurisdictions have a discretionary legislative capacity that can be used to change lease conditions to allow for non-pastoral land uses to occur (see table 3.4).

The level of this discretionary power varies across jurisdictions. For example, in New South Wales, the Western Lands Commissioner may potentially change any condition associated with a lease, provided that this is not inconsistent with other legislation, such as native title (see section 3.5). In contrast, the discretionary power of the Minister for Natural Resources and Mines in Queensland is such that only activities that are complementary to, and do not interfere with, the original purpose for which the lease was issued, may be approved (see table 3.4).

The level of discretionary power has implications for the extent to which non-pastoral land uses may be facilitated through this mechanism. For example, the Queensland Department of Natural Resources and Mines (DNRM) has recently issued diversification guidelines as part of a broader review of its leasehold arrangements. The diversification guidelines set out that any amendments to lease conditions must not be used to support incremental progression of additional uses to the point where these become the dominant use, such that:

> … if the proposed additional use is assessed as being not complementary to the primary purpose, then the application will be refused in the first instance … . (DNRM 2002, p. 2)

The guidelines propose what could constitute a ‘complementary’ level for several types of diversification activities. For example, a lessee may use up to 50 hectares

of the property for crops not traditionally associated with agriculture, and up to 5 hectares for aquaculture, subject to native title being extinguished (DNRM 2002). Where an activity fails the test of complementarity and the application is refused, the guidelines set out alternative approaches that could be used to enable a diversified use to become a major use (see below).

Table 3.4 **Changing land use conditions on pastoral leases**

Jurisdiction	*Discretionary legislative capacity to change lease conditions*
NSW: *Western Lands Act 1901*	Any covenant, condition, purpose or provision of a lease granted or brought under this Act may with the consent of the lessee be varied modified or revoked or added to by the Minister. These changes may be to such extent and on such terms (including terms relating to the rent or other money payable under the lease) as the Minister may deem desirable (s. 18J).
QLD: *Land Act 1994*	The Minister may approve an application by a lessee that a lease be used for additional or fewer purposes but that any additional purpose must be complementary to, and not interfere with, the purpose for which the lease was originally issued (s. 154).
SA: *Pastoral Land Management and Conservation Act 1989*	The Pastoral Board may vary the land management conditions held under the lease (s. 22).
NT: *Pastoral Land Act 1992*	The Minister may, in his or her discretion, on application in writing by the pastoral lessee, vary a reservation in, or condition or provision of, a pastoral lease (s. 44).

Source: AustLII (2002).

Although managing authorities in New South Wales and South Australia have broad discretionary powers, the use of these powers, in practice, may be limited. In its submission to the Industry Commission's Inquiry into Ecologically Sustainable Land Management, the South Australian Government said:

> The use of pastoral lease land is tightly controlled by the South Australian Pastoral Board and a change of land use other than grazing by sheep and cattle must be approved by the Board. Applications for a change of use that have been viewed favourably tend to be those with a high degree of conservation integrity. (South Australian Government 1997, p. 3)

For example, Birds Australia has obtained a stocking exemption for its Gluepot Station property in South Australia (Birds Australia 2001b).

The discretionary approach, while providing broad scope for some non-pastoral land uses, lacks transparency and may also involve inconsistencies, thereby creating uncertainty and influencing investment decisions. For example, in their assessment of the *Western Lands Act 1901*, Abel et al. (1999, p. 15) found that:

> … Western Land Lease conditions are subject to the discretion of the Western Lands Commissioner. Differences in the personal values of the various Commissioners is said to have been reflected in variations in the conditions set and the rigour of imposition.

Further, poorly defined approval processes may result in delays in the processing of applications for non-pastoral land uses, adding to uncertainty for investment decisions.

In the Northern Territory, although the Minister for Lands has a broad discretionary power to vary lease conditions, this mechanism appears to be rarely used to grant approvals for non-pastoral land use. Instead, a modified permit system together with other options, such as excision of land from the lease, are used to facilitate non-pastoral uses.

The use of permits

An alternative approach to changing lease conditions through discretionary amendments is to allow lessees to apply for a permit for non-pastoral land uses. Western Australia, New South Wales and the Northern Territory actively use a system of permits (or equivalent) to facilitate and manage a range of non-pastoral land uses. New Zealand also uses a similar system to control and manage approvals for non-pastoral land uses. In all cases, the issue and operation of a permit is independent of the lease conditions, which remain unchanged.

In Western Australia, division 5 of the *Land Administration Act 1997* allows for permits to be granted for a range of specified uses not within the existing terms of a lease. Sections 118 to 122A each set out a specific activity for which a permit may be issued. While sections 118 to 121 and s. 122A relate mainly to diversification activities, s. 122 provides for permits to be issued for the lessee to use specified land under the pastoral lease for any non-pastoral purposes. This is provided the land has been enclosed or improved. An application must specify the use and area of the activity and any facility that may need to be constructed as part of the activity. The Pastoral Board retains discretionary power over the duration and conditions of each individual permit approval.

In Western Australia, where a permit application requests a significant change in land use and the property is subject to a native title claim, the Board will notify claimants and the Aboriginal Legal Service. Subject to successful negotiations (refer to section 3.5), the Board will approve the proposal and issue the permit (Agriculture Western Australia 1999).

In April 2001, the Pastoral Lands Board of Western Australia and Agriculture Western Australia distributed an information kit to the State's pastoralists designed to raise awareness of diversification opportunities and policy. The kit includes information regarding the types of permissible activities, necessary application forms and procedural details (Department of Land Administration 2001a).

In the Northern Territory, although not specifically referred to as permits, a process exists for lessees to apply for permission to undertake non-pastoral activities over part or all of a pastoral lease. The procedure for application, and the rights attached to any approval, are set out in sections 86 to 89 of the Northern Territory *Pastoral Land Act 1992*.

These stand-alone sections specify the process for applying for permission to vary the lease, the manner in which the Board must consider the application, and the rights attached to any permission to proceed. The Pastoral Board has discretionary power over the final approval of the application (refer to s. 88 of the *Pastoral Land Act 1992*).

Although a permit may be issued over part or all of a pastoral lease, the rights conferred by the permit may constrain non-pastoral land uses. This may occur because the rights to the activity are not recognised in the lease conditions, cannot exceed five years and are personal to the lessee that holds the permit (refer to s. 88 and 89 of *Pastoral Land Act 1992*). In the Northern Territory, lessees undertaking non-pastoral land uses that require more secure and transferable rights to an activity may apply to excise a section of the lease for which the tenure may be changed (see below).

In New South Wales, pastoral leaseholders can apply for a cultivation permit, allowing activities, such as agriculture and mixed farming.

In New Zealand, the *Crown Pastoral Land Act 1998* (CPL Act) created a new regime for the consideration of applications for discretionary consents for non-pastoral uses, such as cropping and cultivation, burning of vegetation, forestry and tourism. The CPL Act requires the Commissioner of Crown Lands to consider 'inherent values' (conservation and heritage values), as well as pastoral values, to ensure that 'the Crown's' full interest in the land is safeguarded. A lessee would also need to comply with the requirements of the *Resource Management Act 1991* and obtain any resource consents needed under that Act.

In Australia, under the current arrangements, the capacity for permits to facilitate non-pastoral land use is limited. This is because they are generally issued for short timeframes and are not transferable with the lease title. However, generally, the use of permits may provide a more transparent framework than *ad hoc* changes to lease conditions.

Changing tenure

A further approach to facilitate non-pastoral land uses is to change the purpose of all or part of a lease by changing its tenure. Queensland, Western Australia, the Northern Territory and New Zealand have legislative processes and mechanisms that may operate in this manner. For Australia, any changes to tenure will be subject to native title where claims are pending (refer to section 3.5).

Conversion to freehold or other tenure

In Queensland, the discretionary power of the Minister for Natural Resources and Mines to approve non-pastoral uses is limited (see table 3.4). Queensland diversification guidelines (DNRM 2002, p. 2) outline several other options whereby a non-pastoral land use may become the dominant use on a pastoral lease. These include:

- excision of part of the existing lease and the issue of a term lease over that part, with or without competition;
- surrender of the whole lease and the issue of a new term lease over that part, with or without competition; or
- conversion of the lease to freehold tenure.

The last option refers to division 3 of the Queensland *Land Act 1994* — 'Conversion of tenure', where s. 166 sets out that:

> … (1) A lessee may apply to convert (the "conversion application") — (a) a perpetual lease to freehold land; and (b) a term lease to a perpetual lease or to freehold land.
>
> (2) The lessee of a term lease issued for pastoral purposes may only apply to convert the lease — (a) to a perpetual lease; and (b) after 80% of the existing term on the lease has expired, unless in the Minister's opinion, special circumstances exist.

As set out in part 2 of the Act, holders of term leases for pastoral purposes may apply to convert their lease to perpetual tenure but not to freehold.

Tenure review in New Zealand

In New Zealand, tenure review of pastoral leases emerged in the 1990s as a response to concerns about sustainable land management of the high country (see box 3.2). Tenure review involves 'the Crown' and a lessee voluntarily negotiating an agreement, whereby land with commercial production potential is freeholded, and land with high conservation values is transferred to the public conservation estate. Protective covenants may also be placed on freeholded land to provide for public access or to protect areas of conservation value (LINZ 1999).

Box 3.2 **Background to tenure review in New Zealand**

In 1994, the Working Party on Sustainable Land Management examined pastoral lease arrangements as part of the South Island high country review. The Working Party acknowledged that in many instances, lessees were reasonably content with the current system under the *Land Act 1948*, despite increased pressure from conservation and recreation interests. However, where lessees wanted to make major land use changes, especially involving outside investment, there were constraints. This reduced opportunities for lessees to move towards sustainable land management.

The Working Party concluded that a voluntary program of tenure review provided 'an important opportunity to improve the sustainable management of the high country'. The reasons for promoting such a change included:

- the predominance of pastoralism through the pastoral lease tenure had impeded the ability of land holders to match land uses to the capability of the land to support them. There were wide variations in climate and soil throughout the high country;
- there needed to be greater freedom to adjust property boundaries to provide the flexibility needed to achieve more suitable land uses. This would enable land holders to make production changes, develop new ventures and so improve the economic viability of their businesses; and
- the lack of clear accountability and responsibility for achieving sustainable land management could not easily be resolved without a better clarification of who was actually accountable and responsible for the condition of the land. Despite the 'good husbandry' covenant in the *Land Act 1948*, 'the Crown' had failed to hold lessees accountable to this covenant. The most satisfactory way to ensure accountability was through a review of the pastoral lease tenure.

The Working Party also identified that there was 'a need to improve the system for adjudicating on the need to retain land in Crown ownership in the wider public interest' — for example, for conservation, heritage, recreation and other purposes.

Source: Working Party on Sustainable Land Management (1994).

Between 1998 and 2000, the tenure review process was largely placed on hold, due to the development of a series of administrative standards under the CPL Act. The standards provide guidelines and criteria for tenure review and other administrative actions conducted by agents of LINZ. Three private companies have been employed by LINZ to process the tenure reviews, and it has been estimated that it will take around 2.5 years to process each review (Primary Production Committee 2001).

Considerable interest has been expressed in tenure review, with some 90 tenure reviews of 109 pastoral leases (out of 304) (LINZ 2001). By late 2001, around 25 reviews progressed primarily under the *Land Act 1948* had resulted in 112 467 hectares being freeholded, and a further 73 043 hectares being set aside for conservation purposes (Local Government and Environment Committee 2002).

Ultimately, up to one million hectares with high conservation values could be transferred to the public conservation estate under the tenure review process (Luxton 1998b). However, acquisition of additional areas of land with high conservation value may be limited by government funding for purchase and for ongoing management. A total of 50 properties have been identified as worthy of government purchase in their entirety to protect the conservation values, but there is no source of funding for this (Local Government and Environment Committee 2002).

In late 2001, the House of Representatives Primary Production Committee expressed concern that no tenure reviews had been completed since the introduction of the CPL Act in 1998 (Primary Production Committee 2001). Further, both pastoral lessees and non-governmental conservation organisations have expressed concerns about the complexity, slowness and outcomes of the tenure review process (see Ensor 2001 and High Country Coalition 2001).

Notwithstanding concerns about the costs and length of the process, tenure review appears to provide for a range of more intensive pastoral and non-pastoral land uses on formerly pastoral lease land (see section 2.2). Tenure review will reduce ongoing government costs of pastoral lease administration, but there will be additional government costs with any expansion of the public conservation estate.

Special leases

In Australia, some provisions do exist for the granting of leases for other purposes. For example, in Western Australia, under the *Land Administration Act 1997* (s. 79), there are provisions for the Minister for Lands to lease Crown land for any purpose. Where a pastoral lease is converted to a lease for other purposes, this may allow a native title claim to be made on the leasehold land (PC 2001a) (refer to section 3.5).

In New South Wales, it is possible for lessees to apply for a change of lease purpose. This can be granted provided that the activity is considered to be environmentally sustainable and native title requirements are met.

Excision

Another option that may be used to allow for a non-pastoral land use to become the primary purpose, is to excise part of a lease and issue an alternative form of tenure over that part of the lease. For example, in the Northern Territory, the option of excision and conversion of land to some alternative form of tenure may facilitate stand-alone commercial uses that do not comply with the pastoral purpose of a lease (Department of Lands, Planning and Natural Resources 2000).

3.5 Native title

Native title is a key element of the broader institutional framework affecting pastoral leases and non-pastoral land use (see box 3.3).

The *Native Title Amendment Act 1998* (Cwlth) made a number of changes to the *Native Title Act 1993* (Cwlth) to clarify that existing rights of pastoral lessees may co-exist with the rights of native title holders. Prior to the 1998 *Wik* decision and the amendments to the *Native Title Act 1993*, the existing rights of lessees were only for pastoral activities consistent with the original lease. The *Native Title Amendment Act 1998* increased the scope of these existing rights by enabling State and Territory governments to allow lessees to undertake other activities under the umbrella definition of 'primary production'. This allows for diversification activities, such as cultivating land and aquaculture activities.

'Primary production activity' is defined in s. 24 GA of the *Native Title Act 1993* (Cwlth) as:

> (1) The expression primary production activity includes the following:
>
> (a) cultivating land;
>
> (b) maintaining, breeding or agisting animals;
>
> (c) taking or catching fish or shellfish;
>
> (d) forest operations (defined in section 253);
>
> (e) horticultural activities (see section 253 for the definition of horticulture);
>
> (f) aquacultural activities;
>
> (g) leaving fallow or de-stocking any land in connection with the doing of any thing that is a primary production activity.

The *Native Title Act 1993* (Cwlth) reserves the right of traditional owners to negotiate on other activities not within the definition of 'primary production'. Therefore, for non-pastoral uses that fall outside this definition, where applicable, native title must be addressed.

Where native title claims are pending and lessees wish to change the pattern of land use beyond what is permissible under 'primary production', lessees can negotiate directly with traditional owners to ratify Indigenous Land Use Agreements (ILUA). These agreements are legal documents that provide lessees with consent to undertake certain activities on the land.

Box 3.3 **Native title and pastoral leases**

Native title is the recognition by Australia's High Court of 'the common law rights and interests of Aboriginal and Torres Strait Islander people in land, according to their traditional laws and customs'. The question of native title was raised when the High Court decided in 1992 in favour of a land claim by the late Eddie Mabo, a Torres Strait Islander.

The High Court ruled that native title could exist where the particular indigenous people had maintained their traditional connection to the land and where their native title had not been extinguished by government actions. The High Court has indicated that native title is extinguished by grants that are inconsistent with the continuing existence of native title. It was believed at that time that this included pastoral leases. Based on the comments made in the Mabo case it was understood that native title could only exist on vacant Crown land and other Crown land, such as reservations and national parks, and on Aboriginal land.

Native Title Act 1993 (Cwlth): The main purpose of the *Native Title Act 1993* was to recognise and protect native title. As it was widely assumed at the time that native title had been extinguished on pastoral leases and other non-exclusive tenures, the Act did not fully address the possibility that native title might co-exist with other rights on the same land.

The Wik Decision, 1996: The Wik people of Cape York asked the High Court to decide whether a native title claim could be made over pastoral leasehold land. In December 1996, the High Court decided that native title might survive on pastoral leases. It also said that the rights of pastoral lessees prevailed over any inconsistent rights that native titleholders may have. This decision made it imperative that the *Native Title Act 1993* be amended to regulate, in particular, the inter-relationship between native titleholders and pastoral lessees.

Native Title Amendment Act 1998 (Cwlth): The development of the *Native Title Amendment Act 1998* involved extensive discussion with States and Territories and with indigenous groups, pastoral, mining and resources industries. The new Act includes proposals put forward by indigenous interests, such as the introduction of Indigenous Land Use Agreements. The Act also recognises and protects potentially co-existing native title rights on pastoral leases, so native title claims can continue to be made over pastoral leasehold land.

The relationships between native title and pastoral leases may be influenced by future court determinations. For example, several judgments are pending in Australia's High Court for cases that potentially have implications for property rights on pastoral leases. These include cases in Western Australia (refer to *State of Western Australia v Ward & Ors*) and New South Wales (refer to *Wilson v Anderson & Ors*).

Sources: DFAT (2000); PC (2001a); High Court of Australia (2002).

The Parliamentary Joint Committee on Native Title and Torres Strait Islander Land, in its second interim report on ILUAs, stated that:

> … it is clear that the statutory framework supporting ILUAs is able to deliver consensual, certain and flexible outcomes for parties. (Parliamentary Joint Committee on Native Title and Torres Strait Islander Land 2001, p. 42)

However, several submissions to the inquiry noted that the costs of negotiating ILUAs may not justify their use. For example, the Queensland Department of Premier and Cabinet found that:

> The ILUA process is of most use for major projects and infrastructure where the cost involved in the process is justified by the ultimate return. However, for many smaller projects the potential benefits might not justify the resources and effort required to obtain a registered agreement. (Department of Premier and Cabinet (Queensland) 2001, p. 7)

Despite some of the perceived problems of ILUAs, it remains an important mechanism that may allow lessees to resolve the issue of native title and non-pastoral land use for their individual lease. For example, AgForce, the Queensland pastoral industry's peak representative body, has suggested that:

> … if the lessee is keen to upgrade tenure, or undertake some activity that is inconsistent with the terms and conditions of the lease, an ILUA is likely to be a faster track than resolving native title in the courts. (AgForce 2002b, p. 1)

Where ILUAs may not be feasible, informal agreements that recognise the land use objectives of both lessees and traditional owners are also emerging, particularly where lessees seek to respect, conserve and even rehabilitate the ecological and cultural values of the land. For example, Birds Australia have established a working relationship with the native title claimants of Gluepot Station by undertaking to pay for on-site assessments by traditional custodians to inspect any changes that are made to the land, including land clearing for firebreaks and the building of any infrastructure (Gluepot Reserve Management Committee, pers. comm., 14 February 2001).

Other than preparing an ILUA or informal agreement, an application can be made to the Federal Court under the *Native Title Act 1993* (Cwlth) for a determination of 'native title rights and interests' in relation to a specific area. This application can be made by either claimants or non-claimants (see box 3.4).

Box 3.4 **Federal Court determination of native title**

In December 1998, a lessee from a pastoral lease in West Queensland made a 'non-claimant application' for a Federal Court order that 'native title rights and interests' did not exist on Castle Hill Holding — a 23 800 hectare pastoral lease. In May 1999, the Koa People instituted a separate 'claimant application' and asserted title interest over the lease. In April 2000, the Koa People joined the non-claimant proceedings as a respondent but later withdrew as a party to the proceedings. The Koa People did not actively oppose the order sought by the 'non-claimant applicant'. In June 2002, under s. 86G of the *Native Title Act 1993* (Cwlth), the Federal Court ordered that native title did not exist in relation to the pastoral lease.

Source: Kennedy v State of Queensland [2002] FCA 747.

3.6 The pastoral lease rental system

Pastoral lease rental systems may not recognise or provide for the emergence of non-pastoral land uses. Some rental systems have limited capacity to recognise non-pastoral land uses, relying on discretionary variations to achieve this. This may result in the rental systems restricting changes in land use.

Each jurisdiction administers its own system of rentals for pastoral leases with different rental systems, rates and review periods (see table 3.5).

Rentals are paid on an annual basis and are usually calculated as a percentage of the unimproved value of the pastoral lease. For example, rentals for pastoral leases are set at 0.8 per cent of the unimproved land value in Queensland and at 2.7 per cent in South Australia. In New South Wales, rentals for grazing leases are based on the productive capacity of the land calculated on the number of stock. Land valuation and rent review periods vary from one year in the Northern Territory, to five years in Western Australia and New South Wales, and eleven years in New Zealand.

In Western Australia, lease rentals can be varied to take into account activities conducted under a permit (s. 124 *Land Administration Act 1997*). In New South Wales, non-pastoral land uses do not easily fit within the rental system, which is based on pastoral activity. Abel et al. (1999, p. 17) have also observed that:

> A fair rent should reflect any extra income accruing from diversification, but at present there is no mechanism for doing so — for example, there are grazing leases growing some irrigated cotton that are still rated as if only producing wool. Since the land taken for irrigation would have a high livestock carrying capacity, the effect of the land use change would usually be to reduce rent because the rent is based on sheep numbers.

Table 3.5 **Pastoral lease rental systems, rates and review periods**

Jurisdiction	*Rental system, rate and review period*
New South Wales	The annual rent for a grazing lease is based on the productive capacity of the land, assuming fair average seasons, prices and conditions. The rent is calculated and an offer is made to each leaseholder. If refused, then the offer is referred to the local Land Board for determination. Rent is reviewed every five years. Rent is payable in advance on each anniversary.
Queensland	The annual rent on a grazing lease is charged at 0.8 per cent of unimproved value with a small proportion at 3 per cent. Rent on non-rural businesses is charged at 5 per cent. The Department of Natural Resources and Mines undertakes annual valuations of unimproved land values. A landholder may appeal the annual land valuation to the Land Court. Rent is payable annually.
South Australia	The annual rent for a pastoral lease is charged at 2.7 per cent of unimproved land value. The Valuer General may take into account other matters, such as the purpose for which the land is used and the inherent capacity of the land. Rent is payable annually in arrears.
Western Australia	The annual rent for a pastoral lease is the amount of ground rent that the land might reasonably be expected to realise for a long term lease for pastoral purposes. Rents can be varied to take into account other activities conducted under a permit. The Valuer General determines the rent every fifth year. Rent is payable annually.
Northern Territory	The annual rent is set at 2 per cent of the unimproved value of the leased land as determined by the Valuer-General and declared by the Minister each year. Rent is payable in each quarter of the financial year.
New Zealand	The annual rent for a pastoral lease is set at 1.5 per cent of the unimproved land value for the first 11 year period of the lease and at 2 per cent of the unimproved land value for subsequent periods of 11 years. Rent reviews are conducted every 11 years. A lessee may appeal any land valuation (and thereby rental) to the Land Valuation Tribunal for determination. Rent is payable every half year in advance.

Sources: Various Australian State and Territory and New Zealand legislation.

In March 2002, in response to the Western Lands Review, the New South Wales Minister for Land and Water Conservation announced proposed changes to the *Western Lands Act 1901* including a new approach to setting and reviewing rents for leases (Aquilina 2002). Subsequently, the Western Lands Amendment Bill 2002 proposed that subject to minimum rent requirements, the annual rent for a rural holding (that is, a number of leases in the same ownership that constitute a single holding) is to comprise a base rent, plus a cultivation charge and an intensive agriculture charge, reduced by a rehabilitation rebate. The base rent of a holding would reduce as the size of the holding increases. The rehabilitation rebate may provide an incentive for leaseholders to undertake conservation/rehabilitation on pastoral leases.

The total lease rental, rental per hectare and average rental per lease varies between each jurisdiction (see table 3.6). This may reflect a number of factors, such as land capability, lease area and proximity to markets. In Australia, in 2000-01, the

average rental per hectare (and hence the rental return to 'the Crown') varies from around one cent per hectare in Western Australia, to fourteen cents per hectare for grazing homestead perpetual leases in Queensland. The average rental per lease ranges from $204 in New South Wales to $5708 in the Northern Territory.

Table 3.6 **Total lease rental, rental per hectare and average rental per lease, 2000-01**

Jurisdiction	*Number of leases*	*Lease area*	*Average lease area*	*Total lease rental*	*Average rental per hectare*	*Average rental per lease*
		Million ha	ha	Million $	$/ha	$/lease
Queensland	1492[a]	86	57 641	2.95	0.03	1974
	2814[b]	21	7463	2.92	0.14	1038
New South Wales[c]	4265	29.6	6940	0.87	0.03	204
South Australia[d]	333	42	126 126	0.7	0.02	2102
Western Australia	542	96	177 122	0.76[e]	0.01	1402
Northern Territory	219	63	287 671	1.25[f]	0.02	5708
New Zealand[g]	304	2.2	7237	1.5	0.68	4934

a Pastoral holding term leases. **b** Grazing homestead perpetual leases. **c** Grazing leases only (1999 figures). **d** Rent is paid annually in arrears. **e** In 2001-02, total lease rental was $1.014 million. **f** In 2001-02, lease rental increased from 1 to 2 per cent of unimproved land value, with total lease rental approximately $2.8 million. **g** New Zealand dollars.

Sources: Various Australian State and Territory and New Zealand departmental annual reports.

In New South Wales, in 1999, the total annual rental revenue for 4265 grazing leases (aggregated into about 1500 holdings) was $870 000. This was less than the approximate costs of land administration and management of $1 200 000 per annum incurred by the Department of Land and Water Conservation. The combined rentals from grazing and agricultural leases do cover administration costs. A rent rebate of up to 50 per cent (with no rent being reduced below $100) has applied to grazing leases since 1992. The rental revenue from grazing leases ($870 000 after deducting the rebate from rentals) represented around 0.25 per cent of the estimated land value of the grazing land (including some agricultural and irrigation uses) of approximately $380 million (Hyder Consulting 2000).

In Queensland, in 2000-01, there were 1492 pastoral holding term leases comprising some 86 million hectares, and 2814 grazing homestead perpetual leases comprising some 21 million hectares. In 2001, for pastoral holding term leases, the 90 per cent rental range, excluding the top and bottom 5 per cent, was $154 to $6960 per annum. The median rental for pastoral holding term leases was $1016 per annum.

The 90 per cent rental range for grazing homestead perpetual leases was $150 to $3080 per annum, with a median rental of $752 per annum (DNRM 2001).

In 2000-01, the annual rental on pastoral leases in South Australia of some $700 000 was sufficient to meet the base cost of administering the *Pastoral Land Management and Conservation Act 1989* (South Australia Pastoral Board Secretariat, pers. comm., 4 June 2002). The Northern Territory had a total rental revenue of $1.25 million with administration costs of $1.14 million in 2000-01 (Department of Lands, Planning and Environment 2001).

Two important issues are what a rental system should aim to achieve, and the level of rent that governments may charge for the use of a pastoral lease, for either pastoral or non-pastoral purposes. In some jurisdictions, it would appear that the total lease rental does not meet the costs of administration. A related issue is the appropriate commercial rental return to governments for the use of a pastoral lease — further research is required on this issue.

The Queensland 'Managing State Rural Leasehold Land' discussion paper identified that it is necessary to consider whether the rationale for the current rental of 0.8 per cent of unimproved land value is still valid. The discussion paper also questioned 'under what conditions should low rentals for rural leasehold land be applied' (DNRM 2001, p. 24). Further:

> The community, as owner of leasehold lands, is entitled to receive an appropriate financial return on the natural resource being made available for private benefit. A lease represents a partnership between the owner (the Government) and the lessee (the manager) in which each has mutual rights and obligations. …
>
> If lessees can demonstrate that they are managing their leases appropriately and protecting the economic and environmental values of the land, it is possible that the community will be prepared to accept a continuation of this low financial return on resource. (DNRM 2001, p. 24)

Similarly, a report prepared as part of the New South Wales Western Lands Review suggested that 'the rental system should be changed so as to better accommodate land uses other than pastoralism' (Abel et al 1999, p. 5). Further:

> Radical reform of the rental system is needed. A prerequisite is a revenue target set by the treasurer. A system based on market value of leases would be cheap to administer. It would reflect, albeit implicitly, differences in the productive potential and constraints of the land, its current condition and to an extent medium term climatic variation. It would also move with inflation and commodity prices. … (Abel et al 1999, p. 17)

3.7 Summary

- Generally, there is limited direct recognition of non-pastoral land uses within the Australian State and Territory land management legislation objectives. In contrast, the objectives often provide for the facilitation and support of pastoralism.
- The purpose of a pastoral lease provides limited scope for most non-pastoral land uses to occur.
- A range of conditions are attached to a pastoral lease to control land use. These set out the rights of both the lessee and 'the Crown', and the responsibility of the lessee to undertake certain activities in a prescribed manner.
- Several jurisdictions have a discretionary legislative capacity that can be used to change lease conditions to allow for non-pastoral land uses to occur. This approach, while providing broad scope for non-pastoral land uses, lacks transparency and may also involve inconsistencies, thereby creating uncertainty in decision-making processes.
- Permits may allow for non-pastoral land uses to occur through a more transparent process without changing lease conditions. The capacity for permits, under the current arrangements, to facilitate non-pastoral land uses is limited in that they are generally issued for short timeframes and are not transferable with the lease title.
- Another approach for facilitating non-pastoral land uses is to change the tenure for all or part of the lease. Changing the tenure of a pastoral lease to freehold title removes the land from the leasehold system.
- Native title is a key element of the broader institutional framework affecting pastoral leases and non-pastoral land use. For all non-pastoral land uses that fall outside the definition of 'primary production', where applicable, native title must be addressed.
- The pastoral lease rental system may constrain the emergence of non-pastoral land uses.
- In some jurisdictions, the lease rental does not meet the costs of administration or provide a commercial return to 'the Crown' for the use of the land.

4 Concluding comments

Non-pastoral land use can contribute to the broader economic development and environmental management of the rangelands of Australia. The further emergence of non-pastoral land uses may increase the efficiency of resource use, provide development opportunities for rural and regional communities and contribute to ecologically sustainable land management.

While less restrictive pastoral lease arrangements could facilitate non-pastoral land uses, there may be limited commercial opportunities for non-pastoral land uses on some pastoral leases. Opportunities for non-pastoral land uses will also be affected by other factors such as access to finance, infrastructure, and information.

Where native title is applicable, activities on pastoral leasehold land must be consistent with the *Native Title Act 1993* (Cwlth). There are processes and instruments such as Indigenous Land Use Agreements that can be used to progress these issues. However, these processes and instruments may need further development to improve outcomes.

The issues surrounding constraints on non-pastoral land use partly reflect that pastoral lease arrangements are generally not specified in terms of performance goals or outcomes. The arrangements typically focus on control of the specific use of land for pastoralism, rather than addressing the management of the underlying natural resource base. Recently, the New South Wales Western Lands Review recommended a move from prescriptive activity-based land legislation to more outcome-focused, natural resource management-based legislation (see Hyder Consulting 2000).

Pastoral leasing arrangements typically inhibit competition between pastoral and non-pastoral land uses. The arrangements are generally designed to support and facilitate pastoralism and thereby constrain other land uses and impose barriers to entry. Further, pastoral lease arrangements may create perverse incentives to maintain pastoral activities, and increase the relative costs and risks of managing land for non-pastoral land uses. This ultimately influences investment decisions and can prevent the potential benefits from the use of the land being fully realised.

One approach that could be used to examine the constraints on non-pastoral land use within the current State and Territory land management legislation is National Competition Policy (NCP).

In April 1995, all Australian Governments agreed to implement NCP to accelerate and broaden progress on microeconomic reform in recognition of the benefits from sustained economic and employment growth. Part of the NCP required governments to review and, where appropriate, reform all legislation that restricted competition unless the benefits of the restriction to the community as a whole outweighed the costs, and the objectives of the legislation could only be achieved by restricting competition (see NCC 2001 and box 4.1).

Box 4.1 **National Competition Policy and review of legislation**

Under clause 5 of the Competition Principles Agreement (CPA), Australian Governments undertook to conduct a program for the review, and where appropriate, reform of legislation that restricts competition. The guiding principle for the reviews is that legislation should not restrict competition unless it can be shown that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

While there is almost no regulatory activity that is neutral for competition, the types of regulation which impact on competition most directly are those which restrict entry to markets and those which restrict competitive conduct by participants in markets, for example, by sheltering some activities from the pressures of competition.

The CPA provides guidance on matters that should be taken into account in undertaking a review of anticompetitive legislation. Without limiting the terms of reference, a review should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means of achieving the same result including non-legislative approaches.

Sources: Hilmer et al (1993); NCC (2002).

The application of NCP to State and Territory pastoral leasing arrangements appears to have been somewhat limited. Typically, the NCP reviews have not addressed the underlying pastoral lease arrangements or the facilitation and support for pastoralism compared to non-pastoral land uses. For example:

- the Queensland NCP review of the *Land Act 1994* examined two restrictions: a prohibition on corporations from holding perpetual leases for grazing or agricultural purposes; and limitations on the aggregation of leases. The NCP Review Committee completed its report in May 1999. However, the Queensland Government decided that further consultation was required and this began in early 2001. The Queensland Government is considering the review recommendations (NCC 2002);
- the Western Australia NCP review of the *Land Administration Act 1997* examined several regulatory restrictions on competition, including compensation arrangements when a lease expired and lease renewal provisions. Few changes to the Western Australian land legislation were recommended as a result of the review (Department of Land Administration 2001b); and
- the South Australian NCP review of the *Pastoral Land Management and Conservation Act 1989* recommended 'no NCP reform' but that the Act be updated and consolidated (Department of Premier and Cabinet (SA) 2001).

In Victoria, NCP was used to conduct an extensive review of 'Crown land management legislation', including provisions to lease land for pastoral purposes (see The Allen Consulting Group 2000). The Victorian Government has yet to announce the results of the NCP review.

There is a case for a more comprehensive review of the net public benefits from retaining the State and Territory pastoral lease arrangements. NCP could provide a suitable review framework while recognising the particular circumstances in existence in each jurisdiction. Among other things, such a review of pastoral lease arrangements could consider:

- any constraints on the efficient allocation and use of pastoral leasehold land;
- the regulatory complexity of the pastoral lease arrangements;
- pastoral lease rentals and returns; and
- lease term, renewal and compensation provisions.

The relative performance of different land tenure systems in achieving desired natural resource management outcomes could also be examined to inform future land tenure administration and management arrangements for the rangelands.

Traditionally, pastoral leasehold tenure has been used as a policy instrument for land development and social objectives. The arrangements are in part historical, and in part a response to concerns about potential land degradation. More recently, public interest in the different values of the rangelands has been used as justification

for retaining pastoral lease arrangements with multiple ownership rights (for example, see Holmes 2000a and 2000b).

Clear and effective property rights enable the efficient exchange of a resource, good or service through a market. Property rights comprise the bundle of ownership, use and entitlement rights that a user has over a particular resource, good or service and include any responsibilities that the user may have to others (PC 2001b).

There appears to be a lack of clarity and certainty as to the property rights conferred by pastoral lease arrangements. Both lessees and sectoral groups, such as conservation or recreation groups with an interest in rangelands management, have expressed different views on the property rights of leasehold land. For example, some lessees view a pastoral lease as being 'as good as freehold', whereas some sectoral groups view leases as 'public land' with a range of values to be held in the public interest (see Hyder Consulting 2000). Security of tenure is a key issue for lessees (for example, see AgForce 2002a).

A key question for further research is to what extent are pastoral lease arrangements still an appropriate policy instrument. If public ownership and administration is still appropriate (and further examination of its costs and returns is warranted), then more performance-oriented or outcome-focused pastoral leasing arrangements may better provide for the long term economic and ecological prospects of the Australian rangelands. Further, a shift to more 'neutral' leasing arrangements may better facilitate non-pastoral land uses, but any substantial change would need to be consistent with the broader institutional structure, including native title.

A Summary of pastoral lease arrangements

Table A.1 **The Queensland pastoral lease system[a]**

Area held under pastoral lease	107 million hectares or 62 per cent of total land area (term leases and grazing homestead perpetual leases).
Key features of legislation and administration	
Land management legislation	*Land Act 1994*
Primary administrator	Minister for Natural Resources and Mines.
Pastoral lease purpose	A lease must be used only for the purpose for which it was issued and a term lease for pastoral purposes must be used only for agricultural or grazing purposes, or both (s. 153).
Lease term and length	Perpetual and term (maximum length 50 years) (s. 155).
Lease transfer	Subject to conditions, the Minister may approve transfers (s. 322).
Tenure conversion	Lessees may apply to convert a perpetual lease to freehold tenure or a term lease issued for pastoral purposes to perpetual tenure after 80 per cent of the lease has expired (s. 166).
Rental	The annual rent on a grazing lease is charged at 0.8 per cent of unimproved value with a small proportion at 3 per cent (total rental $5.87 million p.a.).
Lease conditions (ie. stocking)	Stocking not referred to in Act. Minister sets typical lease conditions (s. 203) which may include a stocking condition.
Misc. conditions	A lease may be subject to a condition that the lessee personally lives on the lease for the first 7 years of its term (s. 206).
Changing lease conditions	The Minister may approve an application by a lessee that a lease be used for additional or fewer purposes but that any additional purpose must be complementary to, and not interfere with, the purpose for which the lease was originally issued (s. 154).
Resumption powers	All or part of a lease may be resumed with 6 months notice (s. 208).
Other powers	The Minister may give a lessee a written notice to take remedial action, where the Minister considers that the land is being used beyond its capability for sustainable production; in a way not fulfilling the lessee or licensee's responsibility for a duty of care for the land; and in a way likely to cause, or has caused, permanent or serious land degradation (s. 214).
Duty of care	All leases, licences and permits are subject to the condition that the lessee, licensee or permittee has the responsibility for a duty of care for the land (s. 99).
Native title	Where native title applies, any land uses that do not fall under the umbrella definition of 'primary production', must satisfy native title as provided for under the *Native Title Act 1993* (Cwlth) (see s. 24GA).

a Unless otherwise stated, all sections of legislation referred to in this table are from *Land Act 1994*.

Source: AustLII (2002).

Table A.2 **The New South Wales pastoral lease system[a]**

Area held under pastoral lease	30 million hectares or 37 per cent of total land area (grazing leases) (includes 883 000 hectares where cultivation permits are in force).
Key features of legislation and administration	
Land management legislation	*Western Lands Act 1901*[b] *Crown Lands Act 1989*
Primary administrator	Western Lands Commissioner under the direction of the Minister for Land and Water Conservation.
Pastoral lease purpose	The lease is to be used for pastoral purposes (s. 18D).
Lease term and length	Perpetual and term (maximum length 40 years) (s. 28A).
Lease transfer	Subject to conditions, the Minister may approve the transfer of a lease (s. 18G).
Rental	The annual rent for a grazing lease is based on the productive capacity of the land, assuming fair average seasons, prices and conditions (total rental from all grazing leases with rebate ~ $0.87 million p.a.).
Lease conditions (ie. stocking)	A lessee shall not overstock or permit or allow the said land to be overstocked, and the decision of the Commissioner as to what constitutes overstocking shall be final (s. 18D).
Misc. conditions	Any native vegetation on land the subject of the lease, must not be cleared except in accordance with the *Native Vegetation Conservation Act 1997* (s. 18DB).
Changing lease conditions	Any covenant, condition, purpose or provision of a lease granted or brought under this Act whether before or after the commencement of the Western Lands (Amendment) Act 1934, may with the consent of the lessee be varied modified or revoked or added to by the Minister to such extent and on such terms (including terms relating to the rent or other money payable under the lease) as the Minister may deem desirable (s. 18J).
Resumption powers	With six months notice, the Minister may resume up to 80 hectares for any purpose (s. 43A) or part or all of a lease for settlement purposes (s. 44).
Other powers	The Minister, the Commissioner, or an Assistant Commissioner, or any person authorised by the Minister, the Commissioner or an Assistant Commissioner, may at any time enter upon any Crown lands within the Western Division for the purpose of giving effect to the provisions of this Act or the Crown Lands Acts (s. 12).
Duty of care	Land management conditions set out the responsibilities of the lessee to not overstock the land; to foster and cultivate edible shrubs; and plants on the land; to preserve trees, scrub and vegetative cover on the land, and to take such measures to protect the land (including measures to prevent soil erosion or other damage to the land) (s. 18D).
Native title	Where native title applies, any land uses that do not fall under the umbrella definition of 'primary production', must satisfy native title as provided for under the *Native Title Act 1993* (Cwlth) (see s. 24GA).

a Unless otherwise stated, all sections of legislation referred to in this table are from *Western Lands Act 1901*.

b *Western Lands Act 1901* currently under review (see Hyder Consulting 2000).

Source: AustLII (2002).

Table A.3 **The South Australian pastoral lease system[a]**

Area held under pastoral lease	42 million hectares or 43 per cent of total land area.
Key features of legislation and administration	
Land management legislation	*Pastoral Land Management and Conservation Act 1989* *Crown Lands Act 1929*
Primary administrator	Pastoral Board under the direction of the Minister for the Environment.
Pastoral lease purpose	A lessee has an obligation not to use the land for any purpose other than pastoral purposes, except with the prior approval of the Pastoral Board (s. 22). A pastoral purpose means the pasturing of stock and other ancillary purposes (s. 3).
Lease term and length	Term leases only of 42 years duration (s. 24) subject to rolling 14 year assessment periods (s. 25).
Lease transfer	Subject to conditions, the Minister may approve the transfer of a lease (s. 28).
Rental	The annual rental is charged at 2.7 per cent of unimproved value (total rental from all pastoral leases ~ $0.7 million p.a.).
Lease conditions (ie. stocking)	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; the lessee's obligation to maintain existing fencing in a stockproof condition (in practice, this is not enforced); and the lessee's obligation to maintain existing constructed stock watering points in proper working order (s. 22).
Misc. conditions	Pastoral land not be freeholded. A pastoral lease is the only form of tenure that can be granted over Crown land that is to be used wholly or principally for pastoral purposes (s. 8).
Changing lease conditions	The Pastoral Board may vary the land management conditions held under the lease (s. 22).
Resumption powers	The Minister, on giving three months notice to any lessee or purchaser, may resume lands included in the lease or agreement for roads, railways, tramways, sites for towns, park lands, mining purposes, or for any other purpose whatsoever (s. 53, *Crown Lands Act 1929*).
Other powers	The Board may, by notice in writing to the lessee, vary the land management conditions of a pastoral lease to take effect at the commencement of the next 14 year period of the term of lease (s. 26).
Duty of care	It is the duty of a lessee throughout the term of a pastoral lease to carry out the enterprise under the lease in accordance with good land management practices; to prevent degradation of the land; and to endeavour, within the limits of financial resources, to improve the condition of the land (s. 7).
Native title	Where native title applies, any land uses that do not fall under the umbrella definition of 'primary production', must satisfy native title as provided for under the *Native Title Act 1993* (Cwlth) (see s. 24GA).

a Unless otherwise stated, all sections of legislation referred to in this table are from the *Pastoral Land Management and Conservation Act 1989*.

Source: AustLII (2002).

Table A.4 **The West Australian pastoral lease system[a]**

Area held under pastoral lease	96 million hectares or 38 per cent of total land area.
Key features of legislation and administration	
Land management legislation	*Land Administration Act 1997*
Primary administrator	Pastoral Board under the direction of the Minister for Lands.
Pastoral lease purpose	Pastoral land not to be used other than for pastoral purposes without a permit (s.106). Pastoral purposes means the commercial grazing of authorised stock; agricultural, horticultural or other supplementary uses of land related to grazing of authorised stock; and ancillary activities (s. 93).
Lease term and length	All term leases of a maximum 50 years (s. 105).
Lease transfer	Subject to conditions, the Minister may approve the transfer of a lease (s. 134).
Rental	The annual rent for a pastoral lease is the amount of ground rent that the land might reasonably be expected to realise for a long term lease for pastoral purposes (total rental from all pastoral leases ~ $0.76 million in 2000-01 and $1.014 million in 2001-02).
Lease conditions (ie. stocking)	The Board may from time to time determine the minimum and maximum numbers and the distribution of stock to be carried on land under a pastoral lease, based on its assessment of the sustainable carrying capacity of the land and having regard to seasonal factors, and the pastoral lessee must comply with such a determination (s. 111).
Misc. conditions	The lessee must maintain in good condition, and if necessary restore, renew or replace, all lawful improvements to the lease, to the satisfaction of the Board (s. 107).
Changing lease conditions	A permit system controls diversification and non-pastoral land use. The Pastoral Lands Board has powers to issue permits. The Minister retains final approval and discretion over the length and conditions of any permit approval (ss. 118 to 122A).
Resumption powers	The Minister may resume the land for specified public works (s. 161).
Other powers	The Minister, or a person authorised in writing by the Minister for the purpose, may enter any Crown land in order to make any examination, inspection or survey of that Crown land (s. 34).
Duty of care	Land management conditions set out the responsibility of the lessee to use methods of best pastoral and environmental management practice, appropriate to the area where the land is situated, for the management of stock and for the management, conservation and regeneration of pasture for grazing; and to maintain the indigenous pasture and other vegetation on the land under the lease to the satisfaction of the Board (s. 108).
Native title	Where native title applies, any land uses that do not fall under the umbrella definition of 'primary production', must satisfy native title as provided for under the *Native Title Act 1993* (Cwlth) (see s. 24GA).

a Unless otherwise stated, all sections of legislation referred to in this table are from *Land Administration Act 1997*.

Source: AustLII (2002).

Table A.5 **The Northern Territory pastoral lease system[a]**

Area held under pastoral lease	63 million hectares or 47 per cent of total land area
Key features of legislation and administration	
Land management legislation	Northern Territory *Pastoral Land Act 1992* *Crown Lands Act 1992*
Primary administrator	Most administration is by the Minister for Lands, Planning, Environment and Natural Resources or through the Department under delegation of the Minister's powers. The Pastoral Land Board's functions are mainly to consider and make recommendations to the Minister on matters such as subdivisions and conversions to perpetuity, and any other matters the Minister may wish to refer to it. An important function of the Board is to report on land condition.
Pastoral lease purpose	Lease must be used for pastoral purposes (s. 38).
Lease term and length	Perpetual and term (maximum length of 25 years) (s. 48).
Lease transfer	Subject to conditions, the Minister may approve the transfer of a lease (s. 46).
Rental	The annual rent is set at 2 per cent of the unimproved value (total rental from all pastoral leases ~ $1.44 million in 2001/02 and ~ $2.8 million in 2002/03).
Lease conditions (ie. stocking)	The lessee must not use or stock the land other than as permitted by the *Pastoral Land Act* or the lease (s. 39).
Misc. conditions	That the lessee will not clear any pastoral land except with and in accordance with the written consent of the Board or guidelines, if any, published by the Board (s. 38).
Changing lease conditions	The Minister may, in his or her discretion, on application in writing by the pastoral lessee, vary a reservation in, or condition or provision of, a pastoral lease (s. 44).
Resumption powers	Subject to conditions, the Minister may acquire the land for any purpose (s. 43, *Land Acquisition Act 1978*).
Other powers	The Minister or a member of the Board, or a person authorised in writing by the Minister or the Board, may at any time, after giving reasonable notice to the occupier enter on pastoral land for the purpose of giving effect to, or carrying out a function or exercising a power under the *Pastoral Land Act* (s. 9).
Duty of care	It is the duty of a pastoral lessee to carry out the pastoral enterprise under the lease so as to prevent degradation of the land; to participate to a reasonable extent in the monitoring of the environmental and sustained productive health of the land; and within the limits of the lessee's financial resources and available technical knowledge, to improve the condition of the land (s. 6).
Native title	Where native title applies, any land uses that do not fall under the umbrella definition of 'primary production', must satisfy native title as provided for under the *Native Title Act 1993* (Cwlth) (see s. 24GA).

a Unless otherwise stated, all sections of legislation referred to in this table are from *Pastoral Land Act 1992*.

Source: AustLII (2002).

Table A.6 **The New Zealand pastoral lease system**

Area held under pastoral lease	2.2 million hectares or 8 per cent of total land area (also 0.25 million hectares of pastoral occupation licences).
Key features of legislation and administration	
Land management legislation	*Land Act 1948 (LA)* *Crown Pastoral Land Act 1998 (CPLA)*
Primary administrator	Commissioner of Crown Lands: contracts out general administration and tenure review to independent Agents (consultants).
Pastoral lease purpose	Implied that lease must be used for pastoral purposes (s. 4 CPLA).
Lease term and length	Perpetual right of renewal for terms of 33 years (s. 4 CPLA).
Lease transfer	The Commissioner may give consent to transfer a lease (ss 89-92 LA).
Lessee rights	Exclusive right of pasturage over the land. No right to the soil. No right to acquire the fee simple in any of the land (s. 4 CPLA).
Rental	Annual lease rental of 2 per cent of the unimproved land value (ss. 6-8 CPLA) Total rental from all pastoral leases ~ NZ$1.5 million p.a.
Lease conditions (ie. stocking)	Commissioner can establish stock limitations but may also grant exemptions to stock limitations (s. 9 CPLA).
Misc. conditions	A lessee is required to reside personally on the land comprised in the lease unless granted an exemption (ss 96-98 LA). Persons with travelling stock may depasture the stock for up to 24 hours within 500 metres on either side of any road commonly used as a thoroughfare (s. 22 CPLA).
Discretionary activities	Burning of vegetation is not permitted without the Commissioner's consent (s. 15 CPLA). Activities affecting or disturbing the soil (eg. cultivation, top-dressing, tree planting, vegetation clearance and forming roads) are not permitted without the Commissioner's consent (s. 16 CPLA). A recreation permit may be granted for any recreational, accommodation, safari, or other purpose (s. 66A LA).
Inherent values (ie. the natural, cultural and historic values)	The Commissioner must take into account the desirability of protecting the inherent values of the land before exercising any discretion (eg. granting a consent for a discretionary activity, recreation permit or an exemption from a stock limitation) (s. 18 CPLA).
Resumption powers	A lease may be resumed if the land is required for a road or any public purpose, or is required for mining, or contains any mineral or natural gas. A lessee is entitled to full compensation for resumption (s. 117 LA).
Other powers	The Commissioner (or any authorised person), has at all reasonable times, free rights of ingress, egress, and regress in terms of inspecting a lease (s. 26 LA).
Duty of care	The lessee will farm the land diligently and in a husbandlike manner according to the rules of good husbandry, and will not in any way commit waste; will keep the land free from wild animals, rabbits, and other vermin; and will keep the land properly clean and clear from weeds and keep open all watercourses (s. 99 LA).
Specified objects of tenure review	To promote the management of reviewable land in a way that is ecologically sustainable; to enable reviewable land capable of economic use to be freed from the management constraints resulting from its tenure; and to enable the protection of the significant inherent values of reviewable land (s. 24 CPLA).
Treaty of Waitangi	In terms of tenure review, the Commissioner must take into account the principles of the Treaty of Waitangi (s. 25 CPLA), and consult with the relevant iwi authority (s. 44 CPLA). Ngai Tahu have relinquished any direct Treaty interest in return for the ownership of three leases.

Source: The Knowledge Basket (2002).

B Differences between leasehold and freehold tenure

Table B.1 **Summary of the differences between leasehold and freehold tenure**

Issue	*Leasehold*	*Freehold*	*Comment*
Land uses	Limited by purpose of lease and land legislation. Stocking levels, cultivation, etc may be restricted by lease conditions. Limited by environmental and town planning controls.	Limited by environmental and town planning controls.	Leases are subject to a higher level of control.
Tree clearing controls	State retains ownership of native trees. Permission must be sought for clearing.	Regulation of clearing of native trees.	Leases are subject to a higher level of control.
Duty of care	High level duty of care defined in land legislation. May be responsible for developing and maintaining improvements. May be required to engage in property planning.	Duty of care following common law and as required by some Environment Protection Acts.	Leases are subject to a higher level of control.
Transferability, aggregation and subdivision	Lease transfers require Ministerial or Board approval. High level of control on subdivision of leases.	Few limitations on transfer. Unlimited right to subdivide and aggregate subject to town planning controls.	Leases are subject to a higher level of control.
Retrieval/ resumption	Powers to acquire leasehold interest or withhold land when lease expires.	Some powers to acquire land for public works.	Leases are subject to a higher level of control.
Ownership of resources	Ownership of native trees, native fauna and minerals remains with the State.	Ownership of native fauna and minerals remains with the State.	Ownership of vegetation is the major difference.
Security of tenure	Varies according to lease type but forfeiture for non-performance may be possible.	Very high level of security.	In general, leases are less secure than freehold. Perpetual leases approach the level of security of freehold.

Sources: DNRM (2001); Holmes (1999).

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