

BACKGROUND PAPER
STRAYING STOCK ON CALM MANAGED LANDS
IN THE RANGELANDS

OBJECTIVE

This paper will aim to provide the legislative background in relation to stock that stray onto rangeland reserves and other lands managed by the Department of Conservation and Land Management in the rangelands for conservation purposes. It will put forward a number of issues that the RPG should consider to progress the development of this paper at a policy level.

INTRODUCTION

CALM manages many land tenures in the rangelands including national and conservation parks, nature reserves, lands vested in the Conservation Commission and lands placed under the care, control and management of the Commission. Some areas of unallocated Crown land, such as former pastoral leases, are managed by CALM for conservation purposes on behalf of the Department of Planning and Infrastructure, being the relevant agency responsible for the management of UCL (previously the Department of Land Administration was responsible for the management of UCL). Only a few parcels of UCL are managed by CALM under section 33(2) of the Conservation and Land Management Act 1984. This has implications on how straying stock can be addressed.

CALM has also entered into a separate MOU as part of the Government's Machinery of Government Taskforce to manage areas of UCL for weeds, feral animals and fire prevention but this does not influence the matter of straying stock. This is a separate arrangement to the management arrangements of the former pastoral leases that CALM manages for conservation purposes. The different management arrangements for UCL that CALM is involved in are not reflected in the legislation.

Straying stock occurs across all the rangelands and across all CALM tenures. This compromises CALMs ability to manage the lands for biodiversity conservation. The rangelands are a fragile environment and straying stock can have a significant and long-term impact on the landforms and biodiversity values.

The control of straying stock is subject to a number of different statutes, some of which CALM have direct responsibility to implement. On lands reserved or vested in the Commission, or approved for management by CALM, there is a clear opportunity for CALM to use legislation when stock stray onto these lands. The powers and opportunities for CALM to control stock straying on UCL are not as clear. It is likely that further investigation will need to be carried out to determine what opportunities CALM can utilise on UCL.

BACKGROUND

The primary purpose of the reserves and former pastoral leases CALM manages in the rangelands is conservation. All activities that occur on these lands should not degrade or negatively affect upon these values. It is expected that further pastoral lands will be acquired by CALM for inclusion in the conservation estate by means of the 2015 pastoral lease negotiations process and NHT2 investment through a rangelands NRM strategy.

Under the Land Administration Act 1997, a pastoral lease can only be used for “pastoral purposes”. When such a lease is purchased for conservation purposes, the relevant Crown land title is surrendered and the land’s status reverts to UCL. In 2000 a MOU was prepared between CALM and DOLA as an interim measure to facilitate the management of these areas of UCL for conservation purposes, by orders made under S. 33(2) of the CALM Act, until the reservation process of the lands is completed.

Subsequent to the signing of that agreement, it has been deemed that this section 33(2) management arrangement orders are subject to the ‘future act’ provisions of the Native Title Act 1999. As this process will need to be completed during reservation of the lands as well, CALM has made a decision to manage the UCL consistent with its

function under S. 33(1)(d) of the CALM Act and providing services on these lands under S. 33(1)(f) of the Act. A new MOU is being developed between CALM and the Department of Planning and Infrastructure's Land Asset Management Branch.

The movement of stock from neighbouring properties onto CALM estate is a regular occurrence and may occur for a number of reasons. Some of this is inadvertent when fences are damaged or gates left open. There is also an unintentional cause when commodity prices are low and owners may not be as active in the management of stock allowing them to stray. During times of drought and when feed is scarce, stock may be deliberately allowed to stray to take advantage of the better feed conditions on the adjoining CALM estate.

It is a common perception in the rangelands community that CALM does not have adequate resources to manage many of these areas nor has a policy to deal with the issue of straying stock. This allows some pastoral land managers to wilfully allow their stock to stray on adjoining CALM lands with little threat of any enforcement action being taken against them.

The impact of straying stock in the rangelands causes significant damage to the landscape and continues to threaten and degrade biodiversity values. Some landforms and their associated vegetation communities are more under threat due to high grazing values, such as lake frontages, or are inherently unstable, like breakaways and river courses.

While the Dividing Fences Act 1961 does not bind the Crown, CALM has adopted a cooperative approach about boundary fencing. This will be undertaken as part of the 'good neighbour' policy and consistent with available resources. The provision of resources for the maintenance of boundary fencing will be considered on a case-by-case basis.

THE IMPACTS OF STRAYING STOCK ON CONSERVATION VALUES

The biodiversity values in the rangelands can be severely degraded and threatened by stock grazing. In many areas, the structure and composition of that ecosystem has been so disturbed it is unlikely that it will return to its natural state.

The pressure of grazing on floral species does not allow the time needed for the succession of species. The grazing pressure from other species including native and feral animals compounds the impacts of the straying stock and further threatens species and ecosystem viabilities. Compounding impacts of drought, salinity and insect attack following a period of heavy grazing make it difficult for the ecosystem to recover and regenerate.

Stock move throughout the landscape and have the potential to introduce and spread weed and pest plants. Many of these plants are favoured by the disturbance caused by stock and the preferred location of grazing around watering points, wetlands and rivers.

The fragile environments within the rangelands are not able to withstand the impacts caused by hard hooves animals. The grazing impacts together with the disturbance to the surface of the soil make it extremely vulnerable to erosive processes, particularly during flood events. Many areas show the impacts with only the topsoil remaining in-situ around existing vegetation. Areas away from the root system of plants are denuded with the lower less fertile horizons of the soil profile exposed.

The hard hooves of stock are also likely to disturb and cause the destruction of the habitat of many of the native species. Many reptiles and marsupials burrow in the sandy soils or shelter in dead timber. Stock moving throughout these areas easily damages these habitats.

LEGISLATIVE BACKGROUND

The control of straying stock in the rangelands is a complex and difficult management issue. There is a large amount of legislation that pertains to stock management, much of which can only be utilised on certain land tenures. In some respects, CALM officers have reasonably strong powers while other circumstances may require CALM to enlist the cooperation of other authorised officers.

Conservation and Land Management Act 1984

- Section 5 - lands that CALM manages to which the Act applies.
- S. 108B - authorised CALM officers are able to apply Part XX of the Local Government (Miscellaneous Provisions) Act 1960, relating to trespass, on land which Part IX of the CALM Act applies, that is:
 - S. 5 lands,
 - Lands subject to S. 33(2) and,
 - Lands to which S. 131 apply.

If S. 33(2) is invoked, it deems that the Executive Director of CALM is the owner of these lands and authorised officers are his agents.

- S. 108C - allows CALM to excise the rights of ownership of any unbranded cattle (over the age of 12 months) found on lands within the pastoral region to which Part IX applies. This right of ownership is tempered with the requirement for CALM to allow any person to take possession of any cattle that person believes have strayed from adjoining lands.

Conservation and Land Management Regulations 2002

- Regulation 3 - outlines the lands to which the regulations apply, that include those as S. 108B of the CALM Act and lands subject to S. 130(2) of the Act which is subject to an agreement under S. 16 of the Act.
- R. 15 - unlawful to bring or allow any animal to enter or remain on CALM land.
- R. 19 - an owner or person in charge of the animal in contravention of R. 15 to remove the animal when required to do so by an authorised officer.
- R. 20 - authorised office to seize and remove any non-indigenous animal on CALM land if the owner or person in charge cannot be found.

Wildlife Conservation Act 1950

- Section 23(B) - offence to take protected flora on crown land (to take includes to gather, pluck, cut, pull up, destroy, dig up, remove or injure the flora or to cause or permit the same to be done by any means).

Local Government (Miscellaneous Provisions) Act 1960

- Section 458(1) - cattle found trespassing land might be impounded by the owner or the occupier of the land or by a local government ranger.
- S. 458(2) - cattle found trespassing on vacant crown land to be impounded by a local government ranger or a person authorised by the local government and may recover costs incurred for impounding the cattle.
- S. 459 - justice to order the destruction of the cattle if it is not possible to impound the cattle except at an undue expense and the owner of the cattle is unknown or cannot be found.
- S. 460 - owner may impound the cattle on his land or a suitable place if there is no public pound within five kilometers. It also requires that the owner of the cattle be notified within 24 hours of their impounding. If after 72 hours the owner has not paid the amount of damages allowed under this Act, the person who impounded the cattle may impound the cattle at the nearest public pound or arrange through the local government the sale of the cattle. The owner of the land on where the cattle were impounded may be able to claim and recover sustenance charges for the impounded cattle, or the rates chargeable for the public pound in addition to the damages recoverable for the trespass of the cattle on the land.
- S. 461 - person who impounds cattle unlawfully commits an offence.
- S. 462 to S. 479 - notification requirements for impounded cattle and the fees, charges that may be claimed for impounded cattle and the process for the sale or disposal of unclaimed impounded cattle.
- S. 481 - offence under the Act for a person to enter and drive cattle from the land without first giving notice to the owner of the land where the cattle are.

- S. 483 - offence for a person to remove or take down a fence or open a gate, for the purpose of allowing cattle to stray.
- S. 484 - person who permits cattle to stray, to be at large or depastures the cattle in a public place commits an offence.

Land Administration Act 1997

- Section 267(2) - an offence for any person to allow stock to graze on Crown land.

Stock (Identification and Movement) Act 1970

- Section 4 - stock as being any horse, cattle, sheep, swine, goat, deer, buffalo or camelid.
- S. 40 - allows for a Stock Inspector or police officer to impound any stock, not branded, earmarked or otherwise identified, found straying on unenclosed lands.
- S.41 - stock to be lodged at a public pound or if not within five kilometres from one, a private stockyard.
- S.43 - person impounding the stock to furnish a justice with a written statement of the stock impounded. The justice may order the stock to be sold not less than 12 days after the written statement was supplied. The person impounding the stock may be paid reasonable expenses incurred during impounding the stock.
- S. 44 - owner of the stock to take possession of the stock upon proving ownership.

Dividing Fences Act 1961

- Section 4 - the Crown is not bound by the Act.

A summary of the legislation that may be able to be used for controlling straying stock is outlined below.

Land tenure	Legislation	Authorised persons
CALM Act - Section 5 and S. 33(2) lands	CALM Act and Regulations	Wildlife officer, forest officer, ranger, CALM officer
	Wildlife Conservation Act	Wildlife officer

	Local Government (Miscellaneous Provisions) Act Stock (Identification and Movement) Act Land Administration Act	Land owner, local government ranger, authorised CALM officer under CALM Act S. 108B Stock inspector, police officer Authorised officer under S. 9(1)(c) of the Act
UCL	Wildlife Conservation Act Local Government (Miscellaneous Provisions) Act Stock (Identification and Movement) Act Land Administration Act	Wildlife officer Local government ranger, person authorised by local government Stock inspector, police officer Authorised officer under S. 9(1)(c) of the Act

ISSUES

The greatest impediment to CALM being able to enforce legislation on straying stock on land it manages is the tenure of those lands. The CALM and associated Acts give reasonably strong powers to control straying stock on lands to which the CALM Act applies. On areas of UCL, those opportunities for enforcement are not as strong and are not clear.

In the rangelands, only lands reserved under the CALM Act or managed under S 33(2) of the CALM Act, allow CALM to consider it the owner of those lands and apply the relevant legislation, in controlling straying stock. At this time, only those areas of former pastoral lease around the Kennedy Range National Park are subject to Section 33(2) of the CALM Act.

Other former pastoral leases have not been granted the order to manage them under S. 33(2) as they have been deemed to be subject to the future act requirements of the Native Title (State Provisions) Act 1999. These areas are currently UCL managed under the Local Government Act 1995. This does not allow CALM to utilise the powers as if the areas were managed under S. 33(2) of the CALM Act. In these areas, CALM is limited in its powers.

The management of stock, under any legislative basis, will be a difficult and costly undertaking. Any control programs will need to be done on a cost neutral basis using the proceeds of the sale of stock or costs recovered from the owners of branded stock found on CALM land. Opportunities for joint control programs will probably be more effective but caution needs to be given to any perception of favouritism to one adjoining pastoral lease owner over another.

CALM has possession of a stock brand, *CIW3*, authorised to be used on Cane River Station and Mount Minnie Station in the Pilbara region. This brand allows CALM to legally own and sell unbranded stock found on CALM lands where no owner can be determined. This may be a means to recoup any expenditure.

Other legislation including the Local Government (Miscellaneous Provisions) Act, Land Administration Act and Stock (Identification and Movement) Act may be used as an enforcement tool to prevent stock straying onto CALM managed lands. The powers and authorities for CALM officers to use this legislation need clarification.

While the Dividing Fences Act 1961 does not bind the Crown, CALM has a general principle, on recently acquired lands in the rangelands, to share the cost of fencing common boundaries on an equal basis. This is a considerable cost to be borne by CALM regions and consideration needs to be given as to whether there should be a time limit on the availability of this principle. There also needs to be consideration of whether CALM will contribute to the costs required for the maintenance of boundary fences. All decisions need to consider the benefit to CALM in managing the lands as well as the development of a 'good neighbour' relationship in the rangelands.

The completion of boundary fences is a key part in the management of stock. CALM cannot abide by the good neighbour policy indefinitely while waiting for some pastoral leaseholders to participate in a joint fencing program. There needs to be set a time limit as to when CALM will enforce the relevant legislation for wilfully allowing stock to stray onto CALM managed lands. Before this is done, it is recommended that each neighbour of CALM managed properties is made aware of the methods CALM will utilise to control stock that stray onto its lands. This communication should, where relevant, form an agreement to fence and/or maintain boundary fences with set time

limits. If leaseholders choose to ignore this offer within the time limits set, they will be solely responsible for any stock that stray and bear the consequences of any enforcement procedures.

RANGELANDS POLICY GROUP SUMMARY SHEET

MEETING DATE:

12/13 November 2003, Agenda item 4.3

TITLE OF TOPIC:

TENANCY AGREEMENTS FOR HOMESTEADS ON FORMER PASTORAL LEASES

ISSUE TO BE DISCUSSED:

The attached paper provides background discussion for the development of administrative guidelines for the implementation of tenancy arrangements for the occupancy of homesteads and other infrastructure on CALM managed properties in the rangelands.

There are a number of current and recently expired tenancy agreements of various forms. This document will be implemented as those current agreements expire and for all new agreements that are negotiated.

BACKGROUND SUMMARY/IMPORTANT ISSUES:

The Department of Conservation and Land Management (CALM) manages approximately 4.7 million hectares of former pastoral leases located throughout the rangelands. It is expected that further pastoral lands will be acquired by CALM for inclusion in the conservation estate through the 2015 pastoral lease negotiations process.

The purchase of the pastoral leases has often included permanent infrastructure such as homesteads, sheds, fences, bores and windmills. In most instances former lessees or lease managers have remained in residence on the properties during a destocking period. Some have remained after destocking in a caretaker capacity providing a range of services from simply maintaining a presence on the property, the upkeep of homestead infrastructure, goat removal and the provision of services under contract for specific management operations. This arrangement has prevented a population shift away from the pastoral region and the consequent impacts on local communities, which was a major concern of the pastoral community.

It is recognised that there is a need to formalise the arrangements under which former lessees or other caretakers occupy homesteads and other infrastructure on CALM managed properties in the rangelands. It is also recognised that tenancy arrangements need to be separate to arrangements under which former lessees/caretakers provide services for the management of the properties under contract for service arrangements.

RECOMMENDATIONS:

1. The RPG endorse the content of the background paper and the draft tenancy agreement and schedules.
2. Seek Crown Solicitors Office advice to confirm legal elements of the paper prior to its submission to Corporate Executive.
3. Develop an Administration Instruction on the basis of the background paper and CSO advice and submit it to Corporate Executive for endorsement and implementation.

CONFIDENTIALITY:

Nil

PROPONENT:

Acting Assistant Rangelands
Conservation Officer John Carter

FORWARDED BY:

Rangelands Policy Group

DECISION(S):