



Department of Planning,
Lands and Heritage



June 2024

Pastoral Lands Board Guideline

Pastoral Lease Extensions

Acknowledgment of Country

The Pastoral Lands Board acknowledges the traditional owners and custodians of this land. We pay our respect to Elders past and present, their descendants who are with us today, and those who will follow in their footsteps.

Disclaimer

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INTRODUCTION

Part 7 of the *Land Administration Act 1997* (LAA) outlines the Pastoral Lands Board's (PLB) joint responsibility with the Minister for Lands in administering Western Australian pastoral leases.

The PLB is committed to creating an environment where government and pastoral lessees work cooperatively to enhance productivity and financial viability, while achieving improved land management outcomes.

The extension of a short-term pastoral lease up to a maximum of 50 years allows pastoralists to address land degradation issues, enables the lessee to plan and manage the land sustainably into the long term and assists with capital investment in leases and pastoral infrastructure. A longer-term extension may also enable pastoral lessees to pursue ventures such as carbon farming, which require a longer-term tenure.

Sections 105A and 105B of the LAA outline the respective roles of the Minister for Lands and the PLB regarding a pastoral lease extension. The PLB's role, set out in section 105A(4) of the LAA, is to provide advice to the Minister on whether to approve the extension of a pastoral lease. The Minister is the ultimate decision maker regarding the extension of the term of a pastoral lease and is not bound by any advice provided by the PLB.

This guideline has been jointly developed and takes into consideration both the role of the PLB and the Minister for Lands, in order to provide clarity and transparency to lessees on the process and requirements to extend a pastoral lease.

OBJECTIVE

To provide clear information regarding increasing the term of a pastoral lease by:

- (a) Extending the term of the existing pastoral lease; or
- (b) Surrender of the existing pastoral lease and grant of a new pastoral lease for a longer term (up to a maximum of 50 years) under Part 7 of the LAA.

WHAT THIS GUIDELINE CONTAINS

- Information on section 105 of the LAA
 - The permissible term of a pastoral lease
- Information on sections 105A and 105B of the LAA
 - Methods to increase the term of a pastoral lease up to a maximum of 50 years, and related requirements
 - Potential conditions in an agreement to extend the term of a pastoral lease
- Information on the Pastoral Lease Extension process, including compliance with the *Native Title Act 1993*

TERM OF PASTORAL LEASES

The maximum term of a pastoral lease is 50 years, as outlined in section 105 of the LAA. Where a pastoral lease has a term of less than 50 years, section 105A of the LAA empowers the Minister for Lands, on application by the lessee, to either:

1. Extend the term of the lease up to a maximum of 50 years; or
2. Accept the surrender of the lease and grant a new lease for a term of up to 50 years under section 101 of the LAA.

If the lease is surrendered and regranted, the new lease can be granted over the whole or part of the land under the original lease. New leases will be granted on the standard pastoral lease terms and conditions in the Land Administration Regulations 1998 or on the same or different terms and conditions as the original lease if no standard pastoral lease terms and conditions are prescribed.

THE LEASE EXTENSION PROCESS

Applications

Extensions or regrants of pastoral leases are not automatic. Pastoral lessees must apply for a lease extension to the Minister for Lands. Applications can be made at any point during the lease term, leaving sufficient time before expiry of the lease to progress the extension. Written applications should be submitted to the Department of Planning, Lands and Heritage (DPLH), clearly identifying the lease and providing consent from all registered lessees.

Pastoral Lands Board

In considering a pastoral lease extension, the Minister must consult the PLB before issuing an extension or re-grant of a longer-term lease. Similar considerations which apply to a renewal of a pastoral lease apply to an application to extend a lease. Please see the Pastoral Lease Renewal Policy, located on the [PLB's policy web page](http://www.wa.gov.au/PLB-Documents) at www.wa.gov.au/PLB-Documents, for further information.

The PLB must have regard to its functions under Part 7 of the LAA when developing advice for the Minister.

The PLB may consider the lease's ongoing ability to continue to support economically viable and environmentally sustainable pastoral businesses and the impact climate change may have on the carrying capacity of the land.

The PLB may undertake investigations to confirm whether a lessee is compliant with their obligations under the LAA and the terms of the lease.

Advice to the Minister from the PLB

When formulating advice to support the Minister in making a decision regarding a pastoral lease extension, the PLB may consider the following in relation to both an extension/regrant versus non-extension/regrant:

- if the lease is managed jointly with another lease, what would be the effect on the viability of that other lease,
- the broader implications on the administration of the pastoral estate, and
- the effects on land condition outcomes on the land under the lease.

In considering compliance with the LAA, the PLB may refer to PLB documents including the Pastoral Purposes Framework, the Good Pastoral Land Management Guidelines, Rangeland Management Compliance Policy, and others as appropriate.

The PLB may consult with the Department of Primary Industries and Regional Development and the Commissioner of Soil and Land Conservation, when developing its advice.

The PLB may examine matters pertaining to the individual lessee, including:

- any outstanding PLB determinations and notices,
- the lessee's compliance with lease conditions, eg payment of rent and other payments, submission of Annual Returns, etc and
- the lessee's compliance with Division 5 permit conditions (where relevant).

Furthermore, DPLH may undertake referrals to relevant Government agencies for their advice where the agency has an interest in the land and provide this advice to the PLB and Minister for Lands.

In considering a request to extend, or regrant, a pastoral lease term, the Minister for Lands must have regard to whether a pastoral lessee has certification under any existing approved accreditation system(s). In the absence of an applicable accreditation system, the PLB will advise the Minister of the land management record of the lessee.

Note:

An Approved Land Management Accreditation System under section 100C of the LAA is a system which will:

- encourage best practices to improve the condition and the management of land held under pastoral lease; and
- provide pastoral lessees with certification if they meet the requirements of demonstrating best practices in land management.

As at the date of publication no accreditation system has been devised and approved by the Minister for Lands.

Agreement to Extend Lease or Regrant Lease for longer term

An Agreement to the extension or regrant of a pastoral lease will be provided by the Minister for Lands in writing (Section 105B Agreement) and will be subject to any conditions specified, including those identified by the PLB or referral agencies. The Agreement will include a condition requiring compliance with the *Native Title Act 1993* (Cth)(NTA), where relevant. For example a requirement for the pastoral lessee to negotiate and register an Indigenous Land Use Agreement (ILUA), before an extension or regrant will be granted.

If the Minister for Lands is satisfied the conditions precedent in the Section 105B Agreement have been met, the Minister will extend or surrender and regrant the pastoral lease for the longer term.

Satisfying the requirements of the *Native Title Act 1993*

The requirements of the NTA must be addressed by the pastoral lessee, for the Minister for Lands to validly grant a pastoral lease extension or regrant for a longer-term pastoral lease. Where native title exists or may exist, pastoral lessees will be required to negotiate an ILUA for the extension or regrant with the relevant native title party(s).

The negotiation and registration of an ILUA is the State's preferred approach to addressing the requirements of the NTA. The extension of a pastoral lease by any method will not extinguish native title, unless agreed to by the native title party(s). A voluntarily negotiated and agreed ILUA provides a process for native title parties to consider the effect of and consent to the proposed grant.

The State will need to be a party to any new agreement and will need to review the ILUA prior to it being entered into, to ensure that it meets the State's requirements. If requested, DPLH will provide a template ILUA

which sets out the State's mandatory provisions and requirements, to assist with commencing ILUA negotiations with the native title party(s). It is recommended that a template is provided to ensure that a pastoral lessee does not incur expense without meeting the requirements of the State.

Discussions with the relevant native title party(s) should commence at an early stage. Pastoral lessees should seek a letter of in-principle support for the negotiation of an ILUA from the native title party(s). DPLH can assist with advice regarding the native status of the land, and information can also be sought from the National Native Title Tribunal.

Pastoral lessees will be responsible for all costs associated with the negotiation and registration of an ILUA, including any compensation payable to the Native Title party(s) or the provision of benefits that may be required as part of satisfying the future act processes. It is recommended that pastoral lessees seek independent legal advice regarding potential ILUA costs (including compensation).

Pastoral lessees with an existing registered ILUA will need to ensure it meets the State's requirements to validly extend or grant a new pastoral lease. Advice regarding the suitability of existing ILUAs for a pastoral lease extension can be sought from DPLH. Pastoral lessees should seek their own independent legal advice regarding an existing ILUA before submitting same for review by DPLH.

Interests registered over pastoral leases

If the term of a pastoral lease is extended under section 105A(1)(a) of the LAA, by extending the term of the existing pastoral lease, any sublease or interest granted under that lease will continue as specified in the extension of lease document.

Other considerations may include the removal of any mortgages, requiring consent from the lender.

For pastoral leases surrendered for the purpose of a regrant, any sublease, other interest or Pastoral Lands Board permits previously granted under that lease will need to be reapplied for under the new replacement lease. DPLH can provide further information on requirements associated with pastoral lease surrenders.

QUESTIONS AND FURTHER INFORMATION ON PASTORAL LEASE EXTENSIONS

Department of Planning, Lands and Heritage

info@dplh.wa.gov.au

National Native Title Tribunal

For further information relating to native title and ILUAs, please visit the NNTT website on www.nntt.gov.au.

The NNTT can assist in various ways at any point before, during or after negotiation of an ILUA, including identifying the claims and determinations that exist over a parcel of land. This is a free service. Proponents can request a search of the NNTT Registers by filling out the search request form found at www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-National-Native-Title-Register.aspx.

Once complete, the form should be sent to enquiries@nntt.gov.au. Assistance with ILUA's – email iluas@nntt.gov.au

APPENDIX 1.

Below is a simplified example of the pastoral lease extension process.

