

Serial 34
Pastoral Land Legislation Amendment Bill 2017
Ms Moss

A Bill for an Act to amend the *Pastoral Land Act* and *Pastoral Land Regulations*

NORTHERN TERRITORY OF AUSTRALIA

PASTORAL LAND LEGISLATION AMENDMENT ACT 2017

Act No. [] of 2017

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2017

An Act to amend the *Pastoral Land Act* and *Pastoral Land Regulations*

[Assented to [] 2017]
[Second reading [] 2017]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Pastoral Land Legislation Amendment Act 2017*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Pastoral Land Act

3 Act amended

This Part amends the *Pastoral Land Act*.

4 Section 3 amended

(1) Section 3(1)

insert (in alphabetical order)

animal equivalent, see section 3A(2).

applicant, for Part 4, Division 1, see section 35(5).

estimated carrying capacity, see section 3A(1).

interested person, for Part 4, Division 1, see section 35(5A).

lease transaction, for Part 4, see section 30B(1).

sublease, for Part 4, see section 30A.

sublessee, for Part 4, see section 30A.

(2) Section 3(1), definition **Aborigine**

omit

Aborigine

insert

Aboriginal

5 Sections 3A and 3B inserted

After section 3, in Part 1

insert

3A Meaning of *estimated carrying capacity* and *animal equivalent*

- (1) ***Estimated carrying capacity*** is the number of animal equivalents that an area of pastoral land can sustainably support.
- (2) One ***animal equivalent*** is equal to one 450 kg non-breeding beast.

3B Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 3B

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

6 Section 12 amended

- (1) Section 12(1)
omit
shall consist of
insert
consists of at least
- (2) Section 12(2)
omit
shall
insert
must

7 Section 22 replaced

Section 22
repeal, insert

22 Unauthorised disclosure of confidential information

- (1) A member of the Board commits an offence if:
- (a) the member obtains information in the course of the member's duties as a member; and
 - (b) the member intentionally engages in conduct; and
 - (c) the conduct results in the disclosure of the information and the member is reckless in relation to the result.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) Subsection (1) does not apply if:
- (a) the member discloses the information:
 - (i) for the administration of this Act; or

- (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or
- (b) the information is otherwise available to the public.

Note for subsection (3)

In addition to the circumstances mentioned in subsection (3), a member who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

8 Part 4, Division 1AA inserted

After Part 4 heading

insert

Division 1AA Definitions

30A Definitions

In this Part

lease transaction, see section 30B(1).

sublease includes any agreement that confers possession of pastoral land.

sublessee includes any person deriving possession under a sublease of pastoral land.

30B Meaning of *lease transaction*

- (1) A ***lease transaction*** is any one of the following:
- (a) transfer of a pastoral lease;
 - (b) sublease of all or part of land the subject of a pastoral lease;
 - (c) transfer a sublease;
 - (d) variation or extension of a sublease;
 - (e) any other transaction that results in a pastoral lessee or sublessee otherwise parting with possession of pastoral land.

- (2) For this section, where a body corporate is a lessee or sublessee, any change in the following is taken to be a transfer of the lease or sublease:
- (a) the ability or capacity of one or more persons to control or procure the composition of the board of directors of the lessee or sublessee;
 - (b) the ability or capacity of one or more persons to cast or control, or procure the casting of 15% or more of the maximum number of votes that may be cast at a general meeting of the lessee or sublessee;
 - (c) the holding of legal title to, or of a beneficial interest, direct or indirect, whether by medium of interposed corporations or trusts or otherwise, in 15% or more of the shares in the lessee or sublessee.

9 Section 35 amended

- (1) Section 35(1)
omit
notice in writing
insert
written notice
- (2) Section 35(1)(a) to (c), at the end
insert
and
- (3) Section 35(3)
omit
shall
insert
must

(4) Section 35(4), (5) and (6)

omit, insert

(4) A person commits an offence if:

- (a) the person receives a notice under subsection (1); and
- (b) the person intentionally engages in conduct; and
- (c) the conduct results in a contravention of the notice and the person is reckless in relation to the result.

Maximum penalty: 440 penalty units and 8 penalty units for each day during which the offence continues.

(4A) Strict liability applies to subsection (4)(a).

(4B) It is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse.

(5) The Minister may, by written notice, require a person (the **applicant**) making an application under section 68(1) to provide the Minister with a statutory declaration setting out the particulars mentioned in subsection (1) that the Minister requires in order to be satisfied that, on the completion of the proposed transaction, the applicant or another person would not contravene section 34(1).(5A) The Minister may, by written notice, require a person (an **interested person**) who, if an application under section 68(1) is approved, would gain an interest in the land subject to the application to provide the Minister with a statutory declaration setting out the particulars mentioned in subsection (1) that the Minister requires to be satisfied that, on the completion of the proposed transaction, the interested person or another person would not contravene section 34(1).

(6) The Minister must not refer an application to the Board under section 68(2), or consent to the proposed lease transaction, until the applicant or the interested person has complied with a notice under subsection (5) or (5A).

(5) Section 35(7), (10) and (11)

omit (all references)

shall

insert

must

(6) Section 35(8)

omit

may in his or her

insert

may, at the Minister's

(7) Section 35(10)

omit

pursuant to

insert

under

(8) Section 35(10)

omit

his or her

insert

the Minister's

(9) Section 35(10)

omit

notice in the *Gazette*

insert

Gazette notice

10 Section 38 amended

(1) Section 38(1)

omit

he or she

insert

the Minister

- (2) Section 38(1)(a), (b) and (k) and (2)

omit

shall

insert

is to

- (3) Section 38(1)(e)

omit

him or her

insert

the lessee

- (4) Section 38(1)(f)

omit

shall be

insert

is

- (5) Section 38(1)(g)

omit

all words from "shall" to "be"

insert

is, subject to this Act,

- (6) Section 38(2) and (4)

omit (all references)

Aborigines

insert

Aboriginals

- (7) Section 38(2)(a), at the end

insert

or

- (8) Section 38(2)(c)

omit

land,

insert

land;

- (9) Section 38(2)(d), at the end

insert

and

- (10) Section 38(2)(f)(ii)

omit

naturally,

insert

naturally;

- (11) Section 38(2)(f)

omit

land,

insert

land;

- (12) Section 38(4)

omit (all references)

Aborigine

insert

Aboriginal

(13) Section 38(4)

omit

his, her or

(14) Section 38(4)

omit

him, her or

(15) Section 38(5) and (6)

omit, insert

(5) A person commits an offence if the person interferes with the full and free exercise by Aboriginals of rights reserved in favour of those Aboriginals under a pastoral lease.

Maximum penalty: 40 penalty units.

(6) An offence against subsection (5) is an offence of strict liability.

(7) It is a defence to a prosecution for an offence against subsection (5) if the defendant has a reasonable excuse.

(8) Without limiting subsection (7), it is a reasonable excuse if the conduct forming the basis of the alleged offence entailed reasonable acts taken by, or on behalf of, a lessee, or another person having an interest in the lease, to ensure the proper management of the lease for the purposes for which it was granted.

11 Section 40 amended

(1) Section 40(1)

omit

his or her

insert

the lessee's

(2) Section 40(1), (2) and (3)(d)

omit

notice in writing

insert

written notice

(3) Section 40(3)(a), at the end

insert

or

(4) Section 40(3)(c)

omit

(2),

insert

(2);

(5) Section 40(5) and (8)

omit

shall

insert

must

(6) Section 40(6)

omit

notice in the *Gazette*

insert

Gazette notice

(7) Section 40(7)

omit, insert

- (7) A pastoral lessee commits an offence if:
- (a) the lessee receives a notice under subsection (3)(d); and
 - (b) the lessee intentionally engages in conduct; and
 - (c) the conduct results in a contravention of the notice and the person is reckless in relation to the result.

Maximum penalty: 85 penalty units and 4 penalty units for each day during which the offence continues.

(7A) Strict liability applies to subsection (7)(a).

(7B) It is a defence to a prosecution for an offence against subsection (7) if the defendant has a reasonable excuse.

12 Sections 54 and 55 replaced

Sections 54 and 55

repeal, insert

54 Determination of estimated carrying capacity

- (1) The Agency must determine the estimated carrying capacity of pastoral land that is the subject of a pastoral lease.
- (2) The Agency may conduct a review of the estimated carrying capacity at any time, but not more than 10 years after the previous determination.
- (3) After a review is conducted under subsection (2), the Agency must determine the estimated carrying capacity of the land.
- (4) The Agency must, as soon as is practicable after making a determination of estimated carrying capacity, provide written notice of the determination to the lessee of the land.

55 Rent

- (1) Despite anything in a pastoral lease document, the rent payable for a financial year in respect of a pastoral lease is to be calculated using the formula:

$$\text{PLR} = \text{ECC} \times \text{PLRF}$$

where:

PLR = the annual pastoral lease rent in dollars

ECC = the estimated carrying capacity expressed in animal equivalents as determined by the Agency under section 54

PLRF = the pastoral lease rent factor declared under subsection (2) or (3)

- (2) The Minister may, before 30 June in a financial year, by *Gazette* notice, declare the pastoral lease rent factor for a District for the following financial year.
- (3) If the Minister does not declare the pastoral lease rent factor for a District under subsection (2) before 30 June in a financial year, the pastoral lease rent factor for the following financial year remains unchanged.

13 Section 56 amended

- (1) Section 56(1)

omit

shall

insert

must

- (2) Section 56(1)

omit

all words from "rate of rent" to "rate"

insert

pastoral lease rent factor under section 55 (or, if a rent factor

- (3) Section 56(1)(a), at the end

insert

and

- (4) Section 56(1)(b), after "year"
insert
, and the date that amount becomes payable

- (5) Section 56(2)
omit
all words after "lessee"
insert
must pay the rent due and payable in respect of a quarter within 30 days after the payment date specified in the notice under subsection (1) for that quarter.

14 Section 57 replaced

Section 57

repeal, insert

57 Interest accrued for late payment of rent

- (1) This section applies if a lessee does not pay an amount of pastoral rent by the date specified in section 56(2).
- (2) Interest:
- (a) is calculated on the amount of unpaid rent at the rate prescribed by regulation; and
- (b) accrues:
- (i) the first time – on the first working day after the rent first became in arrears; and
- (ii) subsequently – on the first day of each quarter of the financial year that the rent remains unpaid.
- (3) For the calculation of future interest and recovery of the interest, and for section 60, the amount of interest accrued under this section is part of the unpaid rent.

15 Part 4, Division 3 heading replaced

Part 4, Division 3, heading

omit, insert

Division 3 Dealings with pastoral leases

Subdivision 1 Surrender of lease

16 Part 4, Division 3, Subdivision 2 heading inserted

After section 64

insert

Subdivision 2 Uneconomic areas of Crown land

17 Part 4, Division 3, Subdivision 3 heading inserted

After section 65

insert

Subdivision 3 Exchange of lease

18 Section 66 amended

(1) Section 66(2), (4), (5), (6), and (10)

omit (all references)

shall

insert

must

(2) Section 66(2)(a), at the end

insert

and

(3) Section 66(5)

omit

notice in writing

insert

written notice

- (4) Section 66(6)

omit

all words after "in relation to the ensuing financial year,"

insert

the estimated carrying capacity of the land is sooner redetermined under Division 2.

- (5) Section 66(7)

omit

shall, by notice in writing

insert

must, by written notice

- (6) Section 66(8)

omit

shall cause to be lodged

insert

must lodge

- (7) Section 66(9)

omit

shall register

insert

must register

- (8) Section 66(9)(a)

omit

shall extend

insert

extends

(9) Section 66(9)(b)

omit

shall cease

insert

ceases

19 Sections 67 and 68 replaced

Sections 67 and 68

repeal, insert

Subdivision 4 Lease transactions

67 Lease transactions without consent

- (1) A person commits an offence if:
- (a) the person intentionally enters into a lease transaction; and
 - (b) the Minister does not consent to the transaction.

Maximum penalty: For an individual – 40 penalty units.

For a body corporate – 650 penalty units.

- (2) Strict liability applies to subsection (1)(b).

68 Application for consent to lease transaction

- (1) An application for consent to a lease transaction must be made in writing by the lessee or sublessee to the Minister.
- (2) Before deciding an application under subsection (1), the Minister may refer it to the Board for consideration and recommendation, and the Board must report to the Minister within 30 days after the referral is made.

Note for subsection (2)

Section 35(6) imposes a restriction on the Minister's power to refer an application to the Board.

- (3) The Minister must, after considering any recommendations of the Board, but subject to subsections (4) and (5) and section 35(6), by written notice to the lessee, consent or refuse to consent to the lease transaction.
- (4) The Minister must not consent to a lease transaction that is the transfer of a lease until the following amounts have been paid in full:
 - (a) all instalments of the purchase price for the grant of the lease;
 - (b) all rent and other money due and payable to the Territory under the lease.
- (5) The Minister must not consent to a lease transaction that is a sublease unless it is a condition of the agreement that the land will be used only for:
 - (a) pastoral purposes; or
 - (b) the purposes of the Territory; or
 - (c) a non-pastoral purpose for which a permit has been granted under section 88 and which will remain valid for the duration of the sublease; or
 - (d) a purpose prescribed by regulation.

68A Registration of lease transaction

- (1) A lessee must ensure that a lease transaction of a kind mentioned in section 30B(1)(b), (c) or (d) is registered under the *Land Title Act* as soon as is practicable, but not more than 12 months after the earlier of:
 - (a) the execution of the lease transaction by all parties to the transaction; or
 - (b) the date the lease transaction takes effect.
- (2) This section does not apply in relation to a transfer of a sublease of a kind mentioned in section 30B(2).

Subdivision 5 Mortgages

20 Section 70 amended

(1) Section 70(1)

omit

Notwithstanding

insert

Despite

(2) Section 70(1)

omit

his or her

insert

the lessee's

(3) Section 70(2)

omit

the purposes of

(4) Section 70(2)

omit

Aborigines

insert

Aboriginals

21 Part 4, Division 3, Subdivision 6 heading inserted

After section 70

insert

Subdivision 6 Abandonment of leases and vacation of land

22 Section 73 amended

(1) Section 73(1)

omit, insert

- (1) The Board may, by written notice, direct a pastoral lessee to control declared feral animals on the lessee's pastoral land by culling, fencing or other means directed by the Board.
- (1A) A lessee commits an offence if the lessee fails to comply with the reasonable requirements of a notice given to the lessee under subsection (1).
- Maximum penalty: 40 penalty units and 4 penalty units for each day after being found guilty of the offence during which the pastoral lessee fails to comply with the directions.
- (1B) An offence against subsection (1A) is an offence of strict liability.
- (1C) It is a defence to a prosecution for an offence against subsection (1A) if the defendant has a reasonable excuse.

(2) Section 73(2)

omit

notice in the *Gazette*

insert

Gazette notice

23 Section 74 amended

(1) Section 74(1)

omit

notice in the *Gazette*

insert

Gazette notice

(2) Section 74(2) and (3)(a)

omit

shall

insert

must

(3) Section 74(5) and (6)

omit, insert

(5) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in stock entering or remaining in an area and the person is reckless as to that result; and
- (c) the area is a fenced reference area.

Maximum penalty: 440 penalty units.

(5A) Strict liability applies to subsection (5)(c).

(5B) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct occurs on or near a fenced reference area; and
- (c) the conduct results in, damage to the fences and the person is reckless in relation to that result.

Maximum penalty: 440 penalty units.

(5C) Strict liability applies to subsection (5B)(b).

(5D) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct occurs on or near a reference area (whether fenced or not); and
- (c) the conduct results in degradation of the reference area and the person is reckless in relation to that result.

Maximum penalty: 440 penalty units.

(5E) Strict liability applies to subsection 5D(b).

- (6) A pastoral lessee commits an offence if the lessee:
- (a) has knowledge of damage to a fence around a reference area; and
 - (b) does not advise the Board of the damage as soon as possible after becoming aware of it.

Maximum penalty: 8 penalty units.

- (7) Strict liability applies to subsection (6)(b).
- (8) It is a defence to a prosecution for an offence against subsection (6) if the defendant has a reasonable excuse.

24 Section 75 amended

- (1) Section 75(2)
- omit*
- shall
- insert*
- must
- (2) After section 75(2)
- insert*
- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

25 Section 80 replaced

Section 80

repeal, insert

80 Public access not to be obstructed

- (1) A person commits an offence if:
- (a) the person intentionally places an obstruction; and
 - (b) the obstruction is across an access route and the person is reckless as to that circumstance; and

- (c) the person does not have lawful authority to place the obstruction across that route.

Maximum penalty: 40 penalty units.

- (2) Strict liability applies to subsection (1)(c).
- (3) Where pastoral land over which there is an access route is fenced and there is no gate or grid in or other means of passage through or over the fence at the point at which reasonable access to the route can be had, the Minister must erect a suitable gate or grid, or other means of passage, in, through or over the fence at that point.
- (4) A person commits an offence if:
- (a) the person intentionally erects a fence; and
 - (b) the fence is across an access route and the person is reckless as to that circumstance; and
 - (c) the person fails to provide a suitable gate, grid or other means of passage in, through or over the fence at its intersection with the route so that access to the route can be had.

Maximum penalty: 40 penalty units.

- (5) Strict liability applies to subsection (4)(c).
- (6) Subject to section 82, a person commits an offence if:
- (a) the person intentionally locks a gate; and
 - (b) the gate passes over an access route.

Maximum penalty: 40 penalty units.

- (7) Strict liability applies to subsection (6)(b).
- (8) In this section:

access route means a route nominated or indicated under section 79(2) or (3).

obstruction does not include a fence.

26 Section 82 amended

(1) Section 82(1)

omit

management of his or her

insert

management of the lessee's

(2) Section 82(1)

omit

his or her intention

insert

the intention

(3) Section 82(1)

omit

subject of his or her

insert

subject of the

(4) Section 82(2)

omit

shall

insert

must

(5) After section 82(2)

insert

(3) An offence against subsection (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

27 Section 83 amended

- (1) Section 83, heading

omit

rehabilitation, &c.,

insert

rehabilitation and conservation

- (2) Section 83(2)

omit

shall

insert

to

- (3) Section 83(3)

omit

or fails to comply with

- (4) After section 83(3)

insert

(4) An offence against subsection (3) is an offence of strict liability.

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

28 Section 89G replaced

Section 89G

repeal, insert

89G If permit revoked

- (1) After revoking a permit under section 89E or 89F, the Board may, in writing, direct the lessee of land in relation to which the permit had been granted to take reasonable steps to alleviate any impact on the land arising from the use of the land for a non-pastoral purpose.

- (2) A pastoral lessee commits an offence if:
- (a) the lessee receives written directions under subsection (1);
and
 - (b) the lessee intentionally engages in conduct; and
 - (c) the conduct results in a contravention of the directions and the person is reckless in relation to the result.

Maximum penalty: 500 penalty units and 10 penalty units for each day during which the offence continues.

- (3) Strict liability applies to subsection (2)(a).
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

29 Section 119 amended

- (1) Section 119(1)(a), at the end

insert

or

- (2) Section 119(1)(c)

omit

section 40,

insert

section 40; or

- (3) After section 119(1)(c)

insert

(d) a determination of the Agency under section 54(1) or (3);

- (4) Section 119(2)

omit

shall

insert

must

30 Part 13 inserted

After section 135

insert

**Part 13 Transitional matters for Pastoral Land
Amendment Act 2017**

136 Offence provisions – before and after commencement

- (1) The offence provisions, as amended by the *Pastoral Land Legislation Amendment Act 2017*, apply only in relation to offences committed after the commencement of that Act (the **commencement**).
- (2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.
- (4) In this section:

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

31 Act further amended

The Schedule has effect.

Part 3 Amendment of Pastoral Land Regulations

32 Regulations amended

This Part amends the *Pastoral Land Regulations*.

33 Regulation 12 amended

Regulation 12(b) and (c)

omit, insert

- (b) show the estimated carrying capacity determined under section 54 of the Act.

34 Regulation 12A inserted

After regulation 12

insert

12A Rate of interest for late payment

- (1) For section 57(1) of the Act, the rate of interest is the statutory interest rate as in force from time to time.
- (2) In this regulation:

statutory interest rate has the meaning given to it under section 35(1) of the *Taxation Administration Act*.

35 Regulation 31 amended

- (1) Regulation 31(d)

omit

stock.

insert

stock;

- (2) After regulation 31(d)

insert

(e) forestry;

(f) agriculture;

(g) horticulture;

(h) aquaculture.

Part 4 Repeal of Act

36 Repeal of Act

This Act is repealed on the day after it commences.

Schedule Act further amended

section 31

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
sections 4(c)	Aborigines	Aboriginals
section 92(1), definition <i>applicant</i> , paragraphs (a) and (b)	Aborigine	Aboriginal
section 100, heading	Aborigine	Aboriginal
sections 100 and 101	Aborigine (<i>all references</i>)	Aboriginal
section 102(1)(a) to (e), at the end		and
section 102(1)(b) and 108(1)	Aborigine or Aborigines	Aboriginal or Aboriginals
section 109(1)(b)(i)	Aborigines	Aboriginals
	Aborigine	Aboriginal
section 109(1)(b)(i) to (vii), at the end		and
sections 109(1)(b)(vi), (vii) and (ix) and 111(1)(d)	Aborigines	Aboriginals
section 111(1)(d)	<i>Aboriginal Councils and Associations Act 1976 of the Commonwealth</i>	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)</i>
section 114(1) and (4)(c)	Aborigines	Aboriginals
