



Pastoral Lands Board

Policy Statement No. 11

Policy Title	SUBLEASING <u>PART</u> OF A PASTORAL LEASE
Policy Statement	From time to time a pastoral leaseholder may wish to sublease part of their lease area to a third party. The subleasing of all or part of a lease requires the written approval of the Minister (or their delegate). The subleasing of only a part of a lease also requires the written permission of the Pastoral Lands Board.
Purpose / Objective	<p>This policy outlines the process and conditions for the approval of the right to sublease part of a pastoral lease to a third party.</p> <p>It should be noted that the sublease itself (i.e. the written document containing the terms and conditions of the agreement between Lessee and Sub-lessee) is a private agreement between those who are party to the agreement and the Board accepts no liability for any matters arising from the terms and conditions of the agreement.</p>
Background	<p>Pastoral leases are administered under the <i>Land Administration Act 1997</i> by the Minister for Lands on behalf of the State (the landlord). The Pastoral Lands Board (the Board) provides advice, assistance and recommendations to the Minister in the administration of the pastoral leases. The Board has an obligation under section 95(c) of the LAA to ensure that pastoral leases are managed on an ecologically sustainable basis.</p> <p>The <i>Land Administration Act 1997</i> sets out a number of requirements with which pastoral leaseholders must comply. Sub-lessees of a pastoral lease are also bound by the requirements of the Act although, for the purposes of the Act, responsibility for compliance with the Act always remains with the Lessee of the head-lease (in this case, the pastoral lease).</p>
Authority and Delegations	<p>The Pastoral Lands Board has the authority to approve a pastoral lease being worked as two or more pastoral units (s.108(3)).</p> <p>The Minister for Lands has the authority to approve (or not to approve) the subleasing of a pastoral lease (s.134). This power has been delegated, but the Minister retains over-riding authority.</p> <p>Named staff of the Department of Regional Development and Lands (RDL), Pastoral Land unit, have delegated authority from the Minister to approve (or not to approve) applications for subleasing under s.134 of the <i>Land Administration Act 1997</i>.</p>
Policy	The following apply in relation to the sublease of part of a pastoral

Implementation Guidelines

lease:

- (a) The written approval of the Minister (or their delegate) must be obtained in order to lease **part** of a pastoral lease to a third party (i.e. subleasing).
- (b) The written approval of the Board must also be obtained in order to lease **part** of a pastoral lease to a third party.
- (c) The Board's recommendation for approval must accompany the sublease application to the Minister (or their delegate).
- (d) The pastoral leaseholder and/or sub-lessee (if applicable) must provide written explanation to the Board about why they are seeking to sublease a part of the pastoral lease (s.108(1)).
- (e) The pastoral leaseholder should ensure the proposed sub-lessee is aware of the requirements of a pastoral lessee under the *Land Administration Act 1997*, particularly Part 7, Division 4 – Conditions of a pastoral lease.
- (f) A sublease can not be inconsistent with the pastoral lease (the head lease). Therefore:
 - **as all Western Australian pastoral leases expire on 30th June 2015, no subleases will be approved for a period extending beyond 29th June 2015;**
 - land under a sublease can only be used for pastoral purposes or as permitted under a permit issued under Part 7, Division 5 of the *Land Administration Act 1997*; and
 - the sub-lessee must abide by the conditions contained in the pastoral lease and the *Land Administration Act 1997* for the area of land in the sub-lease.
- (g) The pastoral leaseholder is to acknowledge in writing on making the application to sublease that the pastoral leaseholder, and NOT the sub-lessee, remains accountable to the Minister and the Board for the entire pastoral lease. Therefore, any breaches of the Act by the sub-lessee will be the responsibility of the pastoral leaseholder.
- (h) The pastoral leaseholder is to ensure the sub-lessee records and maintains adequate records to enable the pastoral leaseholder to provide the Board with a consolidated 'Annual Return of Livestock and Improvements' by 31 December of each year, as required under section 113 of the *Land Administration Act 1997*. This should be noted in the sublease agreement.
- (i) The pastoral leaseholder remains the primary contact point for the Board for all matters pertaining to the land administration and operation of the lease. This includes for the payment of rent; submission of signed documents required by the Board; correspondence in relation to rangeland management; and formal advice of lease contact detail changes.
- (j) An assignment clause must be included in the sublease clearly stating that the sub-lessee may NOT assign or otherwise dispose of their interest in the sublease without the pastoral leaseholder first obtaining the approval of the Minister. Failure to obtain the approval of the Minister constitutes a breach of the Act and a penalty may apply.

- (k) **For a sublease to be recognised as valid it must be registered on the certificate of Crown land title for the pastoral lease** (in accordance with section 19 of the *Land Administration Act 1997*). This should be done at Landgate within 14 days from the date of the granting of Ministerial approval.
- (l) At its discretion, the Board *may* require that an assessment of the condition of the section of the rangeland to be sublet be conducted. This is to provide a reference for the pastoral leaseholder in terms of the condition of the lease, in the event of any future disputes between the pastoral leaseholder and the sub-lessee on work required on the sublease.
- (m) The Board may require that additional rangeland assessments be undertaken during the term of the sublease.
- (n) Where a Board approved development/management plan is in place, the pastoral leaseholder must ensure that the sub-lessee is aware of commitments made under that plan and that any departure from the plan will require the approval of the Board. The lessee must ensure that the sub-lessee complies with the approved plan as it applies to the subleased area.
- (o) Permits held by the pastoral leaseholder are **not** transferable to a sub-lessee, nor can a sub-lessee be granted a permit under Part 7, Division 5 of the *Land Administration Act 1997*.
- (p) A sublease is not an agistment. An agistment refers to an arrangement for a finite period of up to three years, during which a pastoral leaseholder directly manages on their pastoral lease, livestock owned by a third party. An agistment arrangement requires the written approval of the Board (s.111) (see Policy Statement No.1 for details).

Written applications for subleasing should be delivered to:

The Executive Officer
 Pastoral Lands Board
 Department of Regional Development and Lands
 PO Box 1143
 WEST PERTH WA 6872

**Policy /
 Legislative Base**

Land Administration Act 1997

Specifically sections 108(1), 108(3) and 134:

S.134 Minister's approval required for transfer, mortgage or charge

(1) With the Minister's approval in writing, but not otherwise, a pastoral lessee may –

- (a) transfer to another person; or*
- (b) create a mortgage or charge over*

the lessee's interest in the pastoral lease, or any part of that interest, including any sublease, licence or profit a prendre.

S.108 Management of land under a pastoral lease

(1) A pastoral lessee must, to the satisfaction of the Board, at all times manage and work the land under the lease to its best advantage as a pastoral property.

(3) Except with the written permission of the Board, the land under a pastoral lease must be worked as a single pastoral unit.

Copies of the *Land Administration Act 1997* are available on the State Law Publisher website:
http://www.slp.wa.gov.au/legislation/statutes.nsf/main_actsif_l.html

Definitions

“**Minister**” means the Minister for Lands, a body corporate continued under the *Land Administration Act 1997*.

“**Pastoral lease**” can also be termed Head Lease or Crown Lease, all of which for the purposes of this subleasing policy have the same meaning.

“**Sub-lessee**” means the individual or company holding the sublease.

Related Documents

- Policy Statement No.1 – Agistment of Stock on Pastoral Leased Land
- Guidelines No.1 – Preparing a Development Plan
- Landgate Sub-lease Registration Form - L2C-LAA 1065 - (found at: www.landgate.wa.gov.au using the 'Search' tool)

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19 December 2003

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6 December 2010

Further Information

Department of Regional Development and Lands
Lands Division - Pastoral Land
08 6552 4574 or plb@rdl.wa.gov.au

Version

5.0

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