

Pastoral purposes guide

Development and use of pastoral leasehold land under the
Pastoral Land Act 1992



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1. Introduction

A pastoral lease is a title issued under the *Pastoral Land Act 1992* (the Act) to a person or company to lease Crown land for pastoral purposes. Pastoral leases are granted for a specific term (i.e. period that may include perpetuity) and are subject to lease conditions.

This Pastoral purposes guide has been prepared to assist pastoral lessees in understanding the definition of pastoral purposes and common examples that fall within that definition.

The Northern Territory Government as represented by the Department of Environment, Parks and Water Security has exercised due care and skill in the preparation and compilation of this guide. The information provided is general in nature, and it is recommended that you rely on your own inquiries to independently confirm the information and circumstances applicable to your situation, and that you seek your own independent legal advice as appropriate for your circumstances.

2. Defining pastoral purposes

Pastoral purposes are defined in the Act as:

pastoral purposes mean the pasturing of stock for sustainable commercial use of the land on which they are pastured or agricultural or other non-dominant uses essential to, carried out in conjunction with, or inseparable from, the pastoral enterprise, including the production of agricultural products for use in stock feeding and pastoral based tourist activities such as farm holidays, but does not include a use which, under section 91, is declared by the Board not to be a use for pastoral purposes.

When broken into parts, pastoral purposes is taken to mean:

- 1) the commercial pasturing of stock; and
- 2) any and all uses of land, including agricultural uses and pastoral based tourism, which:
 - a) are non-dominant uses; and
 - b) have a high degree of nexus or relationship to or with the commercial pasturing of stock on the pastoral lease.

Most importantly it establishes that the primary use of pastoral leasehold land must be the commercial pasturing of stock. The other uses are secondary ancillary activities that must be both non-dominant and have a high degree of connection to the particular pastoral enterprise being undertaken on pastoral leasehold land.

2.1. Non-dominant uses

Non-dominant uses are taken to capture uses that are not the primary or principal use of the land. The delineation of dominant and non-dominant uses is a threshold question, which depends on the activity, development footprint or type of use.

As a guide, a non-dominant use would not include use of one or more that:

- 1) would occupy more than 50% of the leased land; or
- 2) require or consume more of the pastoral lessee's efforts, resources (e.g. staff, buildings and infrastructure/improvements, equipment) or costs than the core pastoral enterprise of pasturing stock; or

- 3) would generate from the pastoral lessee more receipts or income than the core pastoral enterprise of pasturing stock.

2.2. Uses connected to the pastoral enterprise

Establishing the connection of a secondary use to the primary use of the land is best undertaken by first defining the pastoral enterprise undertaken on the land. Once the pastoral enterprise is established and understood the secondary use may be connected by being:

- 1) essential to the pastoral enterprise
i.e. absolutely necessary, indispensably requisite or extremely important to the undertaking of the business of pasturing of stock or its commerciality
- 2) carried out in conjunction with the pastoral enterprise
i.e. carried out, connected with, subserving and being ancillary to, the business of pasturing stock on the land
- 3) inseparable from the pastoral enterprise
i.e. unable to be, or incapable of being, separate to or treated separately from the undertaking of the business of pasturing stock or its commerciality.

In every case, the primary consideration is the particular relationship of the use as part of the pastoral enterprise.

2.3. Pastoral based tourist activities

The definition of pastoral purpose draws specific attention to “pastoral based tourist activities”. Tourism involves a paying visitor or holidaymaker coming onto the pastoral lease for a short period for a tourism experience. It includes the actions, undertakings and pursuits related to such invitees comprising accommodating, sustaining and entertaining them while they are present. Most tourism activities focussed on an experience of the pastoral use of the land, such as farm-stay holidays or experiences participating in the day-to-day running of the pastoral enterprise, are consistent with pastoral purposes.

2.4. Production of agricultural products for use in stock feeding

The definition of pastoral purpose also draws specific attention to “production of agricultural products for use in stock feeding”. The ordinary meaning of agriculture is using land for farming, which includes both cultivation of the soil for the growing of crops and the rearing of livestock to provide food, wool and other products. The construct of agricultural products under the Act turns on those products for use in stock feeding for a pastoral enterprise, which is typically agriculture for fodder cultivation and production.

The *Livestock Act 2008* defines fodder as hay, straw, grass, green crop, root, vegetable, grain, corn, meal, licks, litter, manure, manufactured foodstuff, mammalian material or other similar things, used or intended for use, as food or litter for stock; or used, or intended for use, as an ingredient of food or litter for stock; or found with or near stock.

Most cultivations to produce fodder to feed stock on the same pastoral lease are consistent with pastoral purposes, which include the incidental gifting or sale of surplus fodder.

Fodder production and agriculture of a commercial scale, or where there is an insufficient nexus between the cultivation and the pastoral enterprise, are unlikely to fall within the definition of pastoral purposes.

3. Pastoral enterprise

The characterisation of a pastoral enterprise will depend on the individual circumstances. However, a pastoral enterprise will naturally require certain things as part of its development, which is likely to include a homestead, storage areas, yards, paddocks, fence lines, internal tracks, watering points and water storage. It will also include uses that do not require physical improvements or infrastructure on the land, such as spelling the land, pastoral skills development and training, or periodic events relevant to the pastoral industry. These components and uses are integral to the development of a pastoral enterprise and are all regarded as being for the one dominant purpose of the commercial pasturing of stock.

Historically, pastoral leases imposed development conditions, which established the minimum requirements set by the Crown. Development conditions typically included establishing and maintaining a homestead and ancillary buildings, stocking the land with a minimum number and type of branded livestock, installing a particular length of fencing with firebreaks and the minimum number of drafting yards, dips, equipped bores, dams, etc. In some instances, it also specified the minimum required extent of pastoral land clearing and the establishment of particular pastures. The legacy of development conditions over pastoral leasehold land has largely created the current footprint of the contemporary pastoral enterprises in the Territory.

Importantly, perpetual pastoral leasehold land is no longer subject to prescriptive development requirement conditions.

Term pastoral leases are subject to a specific lease condition that requires the lessee to develop sufficient infrastructure to enable the land to be used for pastoral purposes under a plan of development.

4. Hypothetical pastoral enterprise

A hypothetical pastoral enterprise is provided at Figure 1.

This enterprise stocks cattle and it has infrastructure in the form of yards, tracks and watering points to support pasturing its cattle. It has a homestead of buildings for residential, administrative and management purposes, and includes gardens, orchards, kennels, stables, outbuildings and sheds that support the domestic lives of the persons who reside on the pastoral lease. It undertakes supplementary carbon farming activities through savannah burning; makes its electricity through alternative renewable power generation; produces fodder for its cattle and offers farm-stay tourism, where the experience is to participate in the day-to-day running of the pastoral enterprise. It also hosts an annual rodeo and actively destocks the lease entirely from time to time.

This hypothetical pastoral enterprise and its ancillary uses comply with the definition of pastoral purposes, on the basis that the ancillary uses are non-dominant and have a high degree of nexus with the pastoral enterprise (as explained above).

5. Contact details

Please contact the Department of Environment, Parks and Water Security at (08) 8999 4454 or pastoralassessment.depws@nt.gov.au if you have any questions regarding this Pastoral purposes guide.

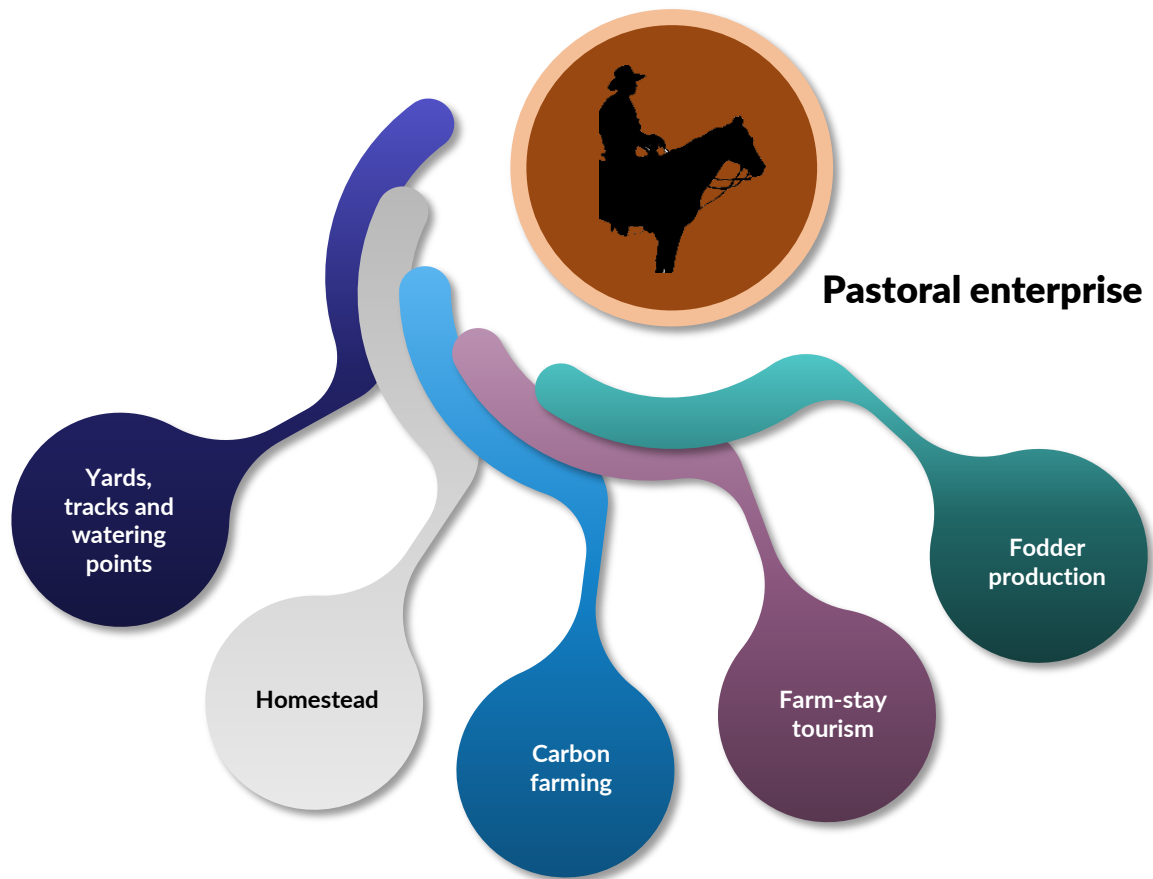


Figure 1. Hypothetical pastoral enterprise