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voice for livestock producers

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Hon Tim Whetstone
Minister for Primary Industries and Regional Development
By Email: Minister.Whetstone@sa.gov.au

Dear Minister,

Re: Review of the Pastoral Land Management and Conservation Act 1989

Thank you for the opportunity to respond to the announced review of the *Pastoral Land Management and Conservation Act 1989*. There are a number of issues upon which Livestock SA seeks to comment.

Since the announcement of the review Livestock SA has had the opportunity to canvas many of our affected members and these submissions reflect those discussions. There are a number of matters which this submission seeks to touch on including tenure, impact of legislation, the nature of stock, lease review systems, Aboriginal issues and the structure and nature of the Pastoral Board itself. Each of those areas of interest are responded to below.

Invariably legislation, policy, regulation and execution of policy intersect. This submission has endeavoured to restrain itself to the matters of the legislation, however, from time to time where it is impossible to separate legislation from policy and execution, Livestock SA has made comment.

There are a number of areas of policy upon which Livestock SA would like to reserve its right to make comment. These areas relate to issues like movement on public access routes, funding of the Pastoral Lands Unit and compliance, or lack of it, of the existing act by the South Australian Government. These issues may become subject of further correspondence on other occasions.

Tenure

Livestock SA expresses its concern regarding the erosion of what tenure used to mean in South Australia. There has been a gradual diminution of the value placed upon the primary function of the pastoral sector in the decades since the drafting of the original *Pastoral Act 1936*. Since 1989 when the Pastoral Act was repealed and replaced with the current instrument there have been multiple amendments to the current act. Some of those amendments have been relatively minor in impact, however, other amendments, such as the amendments relating to the imposition of windfarms, have a major impact on pastoralists.

Additionally, Native Title, tourism concessions, access amendments and other legislative instruments have generated the erosion which has seen the pastoralist increasingly become a mere share owner in their lease. It was never the intention of governments at the time of the establishment of the pastoral industry in South Australia to relegate pastoralists to the role of bit players on their leases.

To attend to this decay of pastoralist's interests Livestock SA suggests that there are a number of responses available to government.

Firstly, the length of the tenure of the lease. Section 24(1) of the Act limits a lease to a maximum term of 42 years. This figure appears to be arbitrary in nature, however, is probably based upon the original notion that a person who took up a lease would have a working life of 42 years. This arbitrary number serves no practical use in the modern context.

Recommendation 1

Livestock SA recommends in doing away with a time limited lease in its entirety.

The better position would be to possess a lease in perpetuity. Perpetual leases are not unknown in the pastoral sector as they exist in other jurisdictions such as the Northern Territory.¹ Perpetual leases generate certainty for the lease holder.

Certainty is the key to investment and the key to security of tenure for the land holders.

Failing a determination by government to accept the notion of a perpetual lease, Livestock SA believes that the minimum lease period should be 99 years. Again, the reason for this period is to generate, as far as possible, the reality of certainty for the holder of the pastoral lease.

Livestock SA supports the policy of pastoral lease inspection. An inspection by the Pastoral Land Board's inspectors currently has the effect of restarting the lease clock. If the Government chooses to continue to link the inspection to the lease period then the effect of a successful inspection should automatically generate a restart of the lease period. So as to avoid doubt, if a lease with 30 years is subject to an inspection and the inspection meets the Government's standards then the lease should reset to 42 or 99 years whichever is the case. This process is currently the policy on the existing 42 year lease period, however, discussed below the inspection process is so poor that the restart on the 42 year lease periods is often missed.

If the government fails to inspect a property within the 14 year time frame then the effect of failing to inspect should trigger an automatic reset of the lease to the original time on the lease.

With regards to question 16 in the discussion paper as circulated, Livestock SA expresses its alarm at the proposition that any other right of access such as tourism should be allowed to be exerted beyond the period of the lease. Livestock SA believes that this proposition demotes pastoralism and allows other industries such as tourism to rank higher in the hierarchy of interests.

Tenure needs to reflect the privacy of the interests of the Pastoralist.

Therefore, tenure needs to be settled upon the pastoralist, not only as a matter of time or position, but must also incorporate the notion of the ability of the pastoralist to say "no" to other intended uses on the lease. Where there is an intended change of use or alternative use of a pastoral lease that the pastoralist should have a power of veto arising out of any intended change of use.

¹ Section 130 Part 12 *Pastoral Lands Act (NT) 1992*

Livestock SA understands that some interests, such as native title, cannot be vetoed. Nevertheless, it has been the experience of some pastoralists that access has been licensed without referral to the pastoralist as the manager of the land. Please refer to recommendation 5.

Pastoralists have reported that tourism operators have been authorised access to pastoral leases without reference to the pastoralist at all. Where this has occurred, it demonstrates that in the imagination of some parts of government, the pastoralist is nothing more than just another individual with a competing right of access rather than a superior right of access.

The Pastoral Land Management and Conservation Act must reflect the primacy of the pastoralist on a pastoral lease wherever possible and should be amended accordingly.

Effect of other Legislation

Currently the Minister for Primary Industries and Regional Development has oversight of 21 separate Acts.² Many of these instruments impact on the operation of the pastoral estate. Moreover, there are many other instruments, which are part not within the orbit of the portfolio responsibilities of the Minister for Primary Industries and Regional Development. Examples are the *Native Title (South Australia) Act 1994* which is the preserve of the Attorney General and the *Natural Resources Management Act 2004* which is the portfolio responsibility of the Minister for Environment and Water.

These acts substantially intrude onto the work of pastoralists. Reviewing the *Pastoral Land Management and Conservation Act 1989* in isolation will not profoundly impact on the operation of the pastoral estate in South Australia.

Essentially, the *Pastoral Land Management and Conservation Act* does little more than govern the leases held by pastoralists. As a vehicle to manage or change the operation of the pastoral industry this review's utility is limited unless Government is prepared to make substantial changes to other instruments in South Australia.

The *Pastoral Land Management and Conservation Act* imposes duties upon pastoralists to:

“ensure that all pastoral land in the State is well managed and utilised prudently so that its renewable resources are maintained and its yield sustained”³

and

“to endeavour, within the limits of financial resources, to improve the condition of the land.”⁴

However, particularly in times of drought these requirements place a pastoralist in a difficult position. The requirements of the *National Parks and Wildlife Act 1972*, at Schedule 10, limits the number of “*Unprotected Species*” to 11 species, all of which are birds, excepting dingos.

Part 5 of the *National Parks and Wildlife Act 1972* establishes the structure of the principles of conservation of native animals in South Australia. Division 4A of the Act determine the limited circumstances in which Red and Western Grey kangaroos may be harvested. This generally requires

² Acts Committed to Ministers under section 5 of the *Administrative Arrangements Act 1994* (Administrative Arrangements Order) 1 July 2019.

³ Section 4 (a)

⁴ Section 7(c)

a plan and assumes that these species may be harvested. However, the definition of harvesting means:

- (a) to kill the protected animal in the wild; or
- (b) to capture the protected animal from the wild and then kill it, in order to sell the carcass of the animal or to use it for any other purpose⁵

The limitation described in the definition precludes culling. From a pastoralist's perspective this means that a pastoralist may not cull Red or Western Grey Kangaroos even when they are present in such numbers that they degrade the land.⁶ This means that often a pastoralist's only option is to reduce stock numbers in times of drought or land stress and is counter to the management expectations of the *Pastoral Land Management and Conservation Act*.

While authorised commercial kangaroo hunters can take kangaroos from properties this approach is limited by the market for kangaroos as well as the size and saleability of the kangaroo being harvested. Lower quality kangaroos will be passed over by commercial harvesters. Because of this kangaroo numbers continue to place substantial pressure on the pastoral estate in South Australia.

Recommendation 2

Livestock SA recommends an amendment to enable pastoralists to take such steps as reasonably necessary to manage kangaroo numbers in accordance with the expectations of the *Pastoral Land Management and Conservation Act* **notwithstanding** the operation of any other act. Specifically, it is recommended that the pastoral lease holder or their agent can take such steps as necessary to manage kangaroo numbers without the requirement to obtain permits.

This issue of Kangaroo numbers is indicative of a greater issue regarding the pastoral estate and captures this increasing notion that the pastoralist is little more than just another interested party in the operation of their property.

The intrusion of regulatory burdens has led Livestock SA to question the utility of the *Pastoral Land Management and Conservation Act* in its totality. However, Livestock SA does believe that the act should continue to perform its functions but as indicated in the preceding paragraphs the continued existence of the act needs to reflect the primacy of the pastoralist as far as possible as the occupier and manager of the land on behalf of the commonwealth of all South Australians.

Stock Management

The definition of stock in the *Pastoral Land Management and Conservation Act* means "*any species of animal permitted by the terms of a pastoral lease to be pastured by the lessee on the land as part of the commercial enterprise under the lease.*"

Essentially by common usage this has come to mean cattle and sheep. Section 31A empowers the minister to vary the land subject to lease by excision, alteration of boundaries, rent payable and the land management conditions if given such advice by the Board. Livestock SA believes that there is merit in amending the section to also enable a variation in the leases to encompass other species such

⁵ Section 60H

⁶ A pastoralist may be issued with a permit to shoot kangaroos, however, it is recommended that pastoralists have a greater authority to exercise judgment.

as goats. Section 22 (6)(a) provides the Board with the capacity to allow animal species other than provided for in the lease.

While the capacity to make such variations to leases is implied in the definition as well as the operation of section 31A, Livestock SA believes that there should be a specific reference inserted in the section which makes it clear that such amendments to leases may be authorised by the Minister to allow for the introduction or primary production of various species in the body of the legislation itself. The Minister would still be obliged to only make such variations upon advice of the Board but it would place the matter of species beyond any doubt or challenge.

Livestock SA notes that there is already a pronounced presence of goats on the pastoral estate in the form of feral animals and what is currently a feral animal could well be a substantial source of income if managed correctly and provided for in the legislation which governs the management of the pastoral estate.

Livestock SA notes that sections 22 and 31A empowers the board to establish or vary stocking rates outlined in the lease. Livestock SA supports this power and does not advocate for its alteration or repeal. However, as a matter of process Livestock SA does express its concern in practical mechanism by which variations may occur. It has been expressed by a number of members that the process is too slow and does not reflect the reality of changing conditions on the land when threats or opportunities become manifest.

Recommendation 3

Livestock SA recommends creating a legislative compulsion on the board to execute its duties with regard to stocking rates in a timely fashion so that changes in the environment can be attended to when opportunities arise.

Lease Review System

Section 25(1) of the *Pastoral Land Management and Conservation Act 1989* provides that “*the Board must cause an assessment of the condition of the land comprised in each pastoral lease to be completed at intervals of not more than 14 years.*” The experience of Livestock SA members is that this is a law which is observed more in the breach than it is in the observance. Moreover, the demands of section 25(2) are even less attended to by the Board and the Pastoral Lands Unit in PIRSA.

The first observation with regard to the 14-year period is that it is another arbitrary number that makes little sense in the real world. Droughts can easily come and go within a 14-year period, so that the inspection on a particular date within a certain period may not really reflect the overall carrying capacity of the land within such a period. Therefore, the utility of such an approach is questioned for want of practicality.

Livestock SA does not automatically advocate for the removal or dilution of this section. However, it does advocate for the government to take the role seriously in making certain that the inspections are carried out in accordance with the legislation. If Government is going to adhere to its current policy namely, as indicated in the section on tenure above, the resetting of the lease period upon successful inspection is correct.

The issue faced by pastoralists, however, is that the application of the laws relating to inspection intervals of “*not more than 14 years*”, is so poorly attended to by Government, that pastoralists have

indicated that they have experienced challenges in obtaining finance. This is because the period of the lease is so diminished that the lease's value as a security has diminished to a point that a bank will not rely on it as a valuable security.

Naturally, the application of perpetual leases would dispose of this issue overnight and could enable a legislative change to the inspection system which would be more akin to a landlord inspecting a property from time to time as the landlord sees fit rather than creating a system of inspectorial demand within a specific time cycle. This would relax the burden upon the Board to meet arbitrary statutory deadlines in favour of a targeted inspection system and would mean that pastoralists could continue to use the equity in their leases for business purposes in an expedient manner.

Livestock SA, however, accepts that the Crown will from time to time need to inspect the land that the Crown possesses. Section 25(2)(a) to (e) provides for the scope and standards that are required for these inspections. As statement of policy Livestock SA supports the provisions of the section and would not support their dilution in any way. This includes inspections that are completed remotely or inspections conducted by outsourced inspectors (i.e. inspectors which were sourced from outside of the SA Government or Pastoral Unit specifically). Livestock SA would stridently resist the outsourcing of inspections were it ever to be pursued by Government.

Recommendation 4

Livestock SA recommends that the act should be amended to make provision for the Minister to be able to make such regulations are necessary for the purpose of identifying appropriate data collection and management systems to ensure consistency of standards across the pastoral estate.

Livestock SA also notes that there is a sliding scale with regard to the imposition of leasing rates.⁷ Livestock SA believes that a flat rate should be applied across the board.

Access by third parties and biosecurity

This submission has already made comment regarding the primary of the pastoralist in maintaining and operating the pastoral lease on behalf of the Crown. Without repeating the comments, Livestock SA does believe that the principle of primacy should be reinforced in the statute with a mechanism which amounts to a power of veto when it comes to their party access to the land covered by a pastoral lease.

While Livestock SA in no way seeks to diminish important industries such as tourism pastoralists have a duty to the management of the land and the stock upon it. In the modern age of farming issues such as biosecurity, weed management and the protection of the pastoral estate as a whole, pastoralists must be properly empowered to do what their leases demand of them and have a capacity to reject propositions pertaining to the land that may threaten their capacity to meet their duties under their leases.

With regard to biosecurity in particular as South Australia endeavours to enter international markets by promoting programs like One Biosecurity as well as increased standards of accountability and traceability South Australia is going to become increasingly focussed on food management across the whole supply chain.

⁷ 2.7% for pastoral leases, 2% for conservation leases, 0% for heritage leases and 5% for tourism leases.

This is important because our international markets will demand security and traceability as time passes. Pastoralists must be able to demonstrate the highest standards of property protection and maintenance if they are to maintain and improve upon the trust of the international marketplace when it comes to food and biosecurity.

Diminishing control by increasing access to other interests in the land threatens to undermine the integrity of that message and threatens South Australia's access to international food markets.

Recommendation 5

Livestock SA recommends that the *Pastoral Land Management and Conservation Act 1989* must contain a provision which attends to two matters;

- firstly, that there be an obligation upon any person or entity including a statutory authority or government instrumentality (including a department) that where there is an intention to use the land for a purpose other than pastoralism by the pastoralist named in the lease that the pastoralist should be consulted, and
- secondly, that the pastoralist named in the lease has the right to reject such a proposal

Livestock SA accepts that the provisions of the rights of the Crown with regard to minerals as well as the rights of native title holders cannot be included in such a provision, it nevertheless expresses a desire to maintain a right to veto for other propositions which impact on the management of the lease.

Recommendation 6

Livestock SA recommends that where a third-party use of the land is permitted that the act be amended which would inoculate the pastoralist from any action arising out of the law of tort arising out of the approved activity. If an approved third-party tourism operator is operating on a pastoral property there should be no liability carried by the pastoralist for an injury or loss which arises out of such an operation on the property unless the pastoralist themselves is the operator.

Aboriginal Access

Livestock SA supports the rights of traditional owners and native title holders onto pastoral leases where an appropriate ILUA exists. The pastoral industry in South Australia acknowledges the prior and current possession of particular language groups to the majority of the pastoral estate in South Australia and there historically has been often a close and symbiotic relationship between traditional owners of the land and the pastoralists who settled the land over the past century and a half.

Recognition of that prior cultural connection and tradition, where established, is both welcomed and embraced by Livestock SA. However, Livestock SA is critical of some of the provisions of the act because the definitions of "Aboriginal" is too broad, potentially for the traditional owners of the land themselves.

Currently the act defines "Aboriginal" in the following terms, "*Aboriginal people means the people who inhabited Australia before European colonisation;*".

Whilst correct on a national level the definition does not recognise the pre-existing cultural groups pre-settlement. For example, Pitantjatjara, Yankunthatjara, Antakaringja and Southern Arrentte to name a few of many.

Section 47 of the act provides that *“an Aboriginal person may enter, travel across or stay on pastoral land for the purpose of following the traditional pursuits of the Aboriginal people.”*

While there is a limitation on the movement to *“traditional pursuits”*, the section effectively enables Aboriginal people from other places to exert a right of access that they should not have either through non-Aboriginal or traditional law.

Recommendation 7

Livestock SA recommends that there needs to be definitional amendment to enable access to the land by the class of people described in the ILUA in question or by actual ties to the area by way of tradition.

The current definition of Aboriginal person is too broad and should be tightened up to include the class of people who have a right of access based in cultural ties and ties through an ILUA rather than the broader notion of Aboriginality alone.

The Pastoral Board

The Pastoral Board sits at the heart of the *Pastoral Land Management and Conservation Act 1989*. Livestock SA believes that the general principles of the act should be maintained regarding the mechanism of creating and placing at the heart of the act the Board which effectively directs government regarding the advancement and the management of the pastoral estate in South Australia. In essence if pastoral legislation is going to exist then the system of a Pastoral Board drawn from the industry itself as the oversight body is utterly correct.

Livestock SA has considered input from its membership regarding the function of the Pastoral Board to set stocking rates. While a contentious issue Livestock SA has settled upon the notion that the setting of maximum stocking rates is an appropriate function for the Pastoral Board to have responsibility for. The Board offers, or at least should offer, dispassionate eyes towards the appropriate stocking rates and the pressure that stock may place onto the pastoral estate of South Australia.

The function of the Board with regard to its functions and duties to the pastoral estate, with regard to management of the leases, is considered to be so important that Livestock SA believes that the functions of the board should not be distracted by external functions such as the management of the dog fence in South Australia.

With the recent injection of \$25 million to the fence the organisation, management, execution and future maintenance of the project will require the careful attention of a dedicated board rather than saddling and potentially distracting the Pastoral Board with extra functions that would diminish its capacity to maintain a careful and watchful eye on the pastoral estate on behalf of the Crown.

Recommendation 8

Livestock SA recommends against the consolidation of the two boards into a single board. Each board has a specific duty and function and those functions should not be compromised for the sake of mere administrative convenience.

Conclusion

It is the belief of Livestock SA that over the past 20 years in particular there has been an erosion of the esteem in which the pastoral industry has been held by government. Increasing intrusion by legislative instruments and third-party interests have amplified that erosion to the point where the primacy of the pastoral industry has been substantially diminished even on the pastoral estate itself.

This submission is aimed at making useful and practical suggestions as to how the primacy of the industry over its own dominion can be restored to a standard to what it should be. This includes a tenure system that is relevant and forward looking and an access system that accounts for the important economic contribution the pastoral industry makes to the commonwealth of all South Australians.

If you have any questions please don't hesitate to contact me.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Joe Keynes', written in a cursive style.

Joe Keynes
President Livestock SA.