



Native Vegetation Council

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Dear Ms Lewis

The Native Vegetation Council (NVC) would like to take this opportunity to thank the Department of Primary Industries and Regions SA (PIRSA) for the opportunity to provide comment on the draft *Pastoral Lands Bill 2020*.

The development of the draft Bill follows the consultation undertaken by PIRSA through the release of the discussion paper, *Planning for the Future of South Australia's Rangelands*. In September of 2019, the NVC provided a response to the discussion paper, in which it highlighted the importance of ecological function and resilience, the recognition of the impact of increased climate variability and the conservation of native flora and fauna to the long term sustainability of both the pastoral industry and the rangelands. In particular, the NVC advocated for a new Rangelands Management Act which was primarily focused on maintaining and enhancing the condition of the natural resources and ecological function of the rangelands and permitting a range of uses, including the continuation of stock grazing, but also conservation, carbon farming, aboriginal cultural activities and ecotourism as legitimate land uses that can exist independent of pastoralism. This approach would allow for greater diversification of land use and increased resilience of the rangelands by allowing the most environmentally, socially and economically appropriate uses to proceed, whilst ensuring the health of the rangelands are maintained.

The draft Pastoral Lands Bill will apply to approximately 39 million hectares of land in the State. This area is almost entirely covered by native vegetation and it is this resource that underpins and supports a sustainable and an economically viable pastoral industry. In the absence of functional ecosystems, with healthy native vegetation and native fauna, the rangelands will suffer a decline in productivity and result in desertification.

Subsequent to the consultation, PIRSA released a report summarising the responses to the discussion paper titled; *Consultation Summary Report In response to Planning for the future of South Australia's Pastoral Rangelands Discussion Paper*. The NVC was encouraged by the response to the discussion paper which indicates that respondents showed strong support for the new Act to provide for conservation and the protection of the environment. The Consultation Summary Report stated that "One of the priorities for all respondents was to ensure the long-term sustainable use and conservation of a healthy and biodiverse ecosystem in the rangelands". The management of rangelands in the face of climate change was also raised by respondents, along with the protection of native vegetation, fragile ecosystems, flora/fauna and biodiversity. Many of the responses noted

that biodiversity, environmental restoration and conservation should be a permitted land use within the Rangelands.

Given the responses provided to the Discussion Paper and the fundamental importance of native vegetation and native fauna to the long term viability of the rangelands, the NVC is extremely disappointed by the extent to which the draft Bill appears to ignore these matters. The draft Bill diminishes the importance of the environment, with the clear emphasis on livestock production and the growth of the pastoral industry. In the absence of adequate protection and management of the native vegetation and fauna, both the environment and the pastoral industry will suffer long-term decline.

There are multiple examples of where protection for the environment has been removed, minimised or otherwise compromised as a result of the draft Bill. This particularly relates to the Objects of the Act and the General Duties of a lessee where reference to preventing the degradation of land and native plant and fauna and improving condition of land, have been removed. In addition to this, the removal of stock maximums from the conditions of lease further compromise protection for the environment. The composition of the Pastoral Board also raises concerns as there is no longer a requirement to have a member with knowledge or experience in ecology or conservation.

The draft Bill not only reduces the protection for the environment, but also likely limits or prevents pastoral land being actively managed for conservation outcomes. This appears to be directly at odds with the responses provided as part of the consultation. Whilst the draft Bill allows for the approval of alternate land use, other than pastoralism, the alternate use must support economically viable pastoralism, and must not be substantially inconsistent with the other objects of the Act. Given the primacy of pastoralism in the Objects, it is likely that the Bill in its current form would prevent or significantly limit the use of pastoral land for conservation or other activities that may involve the removal of stock, even for a defined period of time.

Further to this, the Bill requires under the General Duties of a lessee and Conditions of lease, that a lease is to be proactively managed for pastoralism. This again is likely to prevent or significantly limit the extent to which a Pastoral lease could be managed for conservation, or other potentially stock excluding non-pastoral related enterprises (e.g. ecotourism, environmental offsets or carbon farming).

Of particular concern is that the approval of an alternate land use is entirely at the discretion of the Pastoral Board and can be subject to conditions. If the Pastoral Board decide that the removal of land from pastoralism for any length of time would be at odds with growing the pastoral industry or the purpose of a pastoral lease, then the Board could reasonably refuse or impose highly restrictive conditions on any application for an alternate use for conservation, or non-pastoral related enterprises.

It should be noted that there are already a number of pastoral properties that are managed, either in part or wholly for conservation, as well as properties that are not actively stocked as it is not economically or environmentally viable to do so. Such pastoral leases include Arkaroola (Spriggs Family), Arid Recovery (BHP), Kalamurina (Australian Wildlife Conservance), Yankannina (Operation Flinders), Boolcoomata and Bon Bon (Bush Heritage Australia) and Witchelina and Hiltaba (Nature Foundation). These properties add significantly to tourism and employment in the arid regions of the State, as well as conservation which provides for the long term ecological function of the rangelands. Many of these properties have been purchased with Government funding for conservation, with the approval of the Minister responsible for the Pastoral Land Management and

Conservation Act, and at times with the approval of the Pastoral Board with a nil grazing condition applied. These lessees have acted in good faith often with the support, or at least the approval of Government. However, it is likely that the management of such leases would be inconsistent with the draft Bill and would risk the leases not being renewed or potentially cancelled.

Therefore the draft Bill would potentially compel lessees to stock land that is not economically or environmentally viable or sustainable to be stocked, potentially at odds with existing agreements or legislative requirement such as under the Native Vegetation Act.

PIRSA may argue that land managed for conservation should be excised from pastoral lands and be placed under a different form of tenure. However, the NVC does not consider this to be an appropriate solution. Firstly, for the longevity of the pastoral industry, conservation of native vegetation must be considered an integral part of, not separate too, any pastoral activity. Secondly, a requirement to change tenure may reduce flexibility in moving between land uses and it may limit the opportunities for pastoralist to be involved in different programs if it is difficult or undesirable to change tenure, particularly for a proportion of a lease.

It should be noted, there is currently no clear or simple process for changing land tenure from a pastoral lease to conservation purposes, potentially requiring the excising of a portion of a lease, surrendering the lease, then seeking a new lease under the Crown Land Management Act, likely involving Native Title consideration and the approval of two separate Ministers and any other affected party.

Changing the form of tenure is potentially a difficult and protracted process that would be inhibitive in most instances. It also does not provide the necessary certainty that lessees, who have acted in good faith, often with the assistance of Government, should be provided with. Providing a simple process to seek approval for different land uses under the same land tenure type, would be a far more appropriate and fair approach.

The restrictive nature of the draft Pastoral Bill is also likely to prevent the sale of pastoral land for conservation purposes, as the Minister would be obliged to refuse an application to purchase a property if the Minister believes the lease will not be used in a manner consistent with the Act (i.e. for pastoralism). Where a pastoral lease is no longer viable to be operated for pastoralism, selling the land for conservation may provide the only viable option for a lessee. If this is not possible, it again is likely to result in ongoing and inappropriate management and subsequent degradation of the land.

The NVC notes that the Bill allows for the pasturing of stock other than sheep and cattle on a pastoral lease. The NVC recognises that this is a continuation from the existing Act. However, the NVC takes this opportunity to restate its objection to the use of rangelands for grazing by species that are likely to cause environmental harm. This particularly relates to the commercial grazing of goats, which the NVC considers would cause significant harm to the environment and likely supplement or establish new populations of feral goats. The grazing of such species should not be entertained in the rangelands under any circumstances

The NVC is also concerned with the lack of consultation that is required in relation to activities under the draft Bill. There appears to be no requirement to consult with other agencies or bodies in relation to the development of Guidelines or Policies or making decisions on applications for alternate land uses or changes in stock type. Given that pastoral lands are almost completely covered in native vegetation, many of the decisions of

the Board and the Minister under the draft Pastoral Land Bill will have interactions with the Native Vegetation Act. A lack of requirement to consult with other agencies or bodies may result in inconsistent decision making or poor administrative processes. Noting that reciprocal requirements exist within the Native Vegetation Act for consultation with the Pastoral Board. The new Bill should also ensure that the Minister and the Board have regard to and act consistently with any plans that are developed under the Landscapes SA Act 2019, as is required in relation to the current Act, but has largely been removed from the draft Bill. This will ensure consistent and complimentary management of the rangelands.

The rangelands are a shared resource for all South Australian's and need to be protected for future generations. To ensure the ongoing viability of pastoralism in South Australia, the NVC considers it critical that the new Act requires the protection, management and conservation of native vegetation and fauna habitat. In particular, there should be a focus on maintaining and enhancing the ecological function and resilience of this fragile landscape.

The draft Bill, as currently presented, will significantly restrict the ability of lessees to manage the land in the most appropriate manner, by compelling the lessee to stock the land even when it is not appropriate to do so, or where there are more beneficial options available. In particular the draft Bill likely presents a number significant and potentially inhibitive barriers to a range of alternate non-pastoral based land uses. Given that the Board will need to approve any alternate land uses, and will be able to consider the appropriateness of those uses at that time, it seems unnecessarily restrictive and bureaucratic to have such significant barriers to alternative land uses.

The new Act should be more facilitative and flexible than has been presented. The new Act should focus on maintaining the condition of the pastoral lands and allow the lessees to use the land in a manner of their choosing, so long as it does not cause harm to the land or the condition of the native vegetation and natural resources of the Rangelands.

Please find attached detailed comments on various sections on the draft Bill, including the potential issues that will be created and possible suggested amendments to address those issues. The NVC welcomes any opportunities to discuss these matters further with PIRSA to identify a mutually acceptable outcome. The NVC believes that it is strongly in the interest of both parties that the new Act provides for both the strong protection of the environment and greater flexibility for the use of the land.

Should you have any queries please contact Adam Schutz on 8207 7713.

Yours sincerely



Emily Jenke
Presiding Member
for **NATIVE VEGETATION COUNCIL**

Attachment 1

Below details, in relation to different sections of the draft Pastoral Lands Bill, the changes that have been made from the current Pastoral Land Management and Conservation Act, the issues that will likely be created and the possible amendments that the NVC consider could address the issues.

Section 5 - Objects

The Objects of the Act have changed to place greater emphasis on livestock production and the sustainability, capacity and growth of the pastoral industry. Whilst alternative land uses are envisaged, it is only where they support economically viable pastoralism, and must not be substantially inconsistent with the other objects. In addition to this, the objects no longer make any reference to preventing the degradation of the land and its indigenous plant and animal life.

Given the objects set out the context in which decisions under that Act must be made, the primacy of pastoralism in the object with the exclusion of environmental consideration may have significant consequence for the environment and related legislation. As the pastoral industry is fundamentally reliant on functional and healthy ecosystems, the preservation of the plants and animals should be a primary consideration when administering this Act and therefore should be clearly referred to in the Objects

Further to this, the objects are likely to be quite restrictive in relation to the use of pastoral leases, particularly in relation to the following object; *to provide a form of tenure of Crown land for pastoral purposes*. It should be noted that the current Pastoral Land Management and Conservation Act provides the ability for the Pastoral Board to approve alternate uses of land including for conservation purposes. However the object of that Act, that stipulates the Act provides a form of tenure for pastoral purposes, has significantly constrained the ability to use that clause. Having the purpose of the tenure so narrowly defined in the objects has meant that any activity that is not for pastoral purposes and prevents the pasturing of stock, is at risk of being at odds with this object and therefore not permitted. As such, whilst the new Act allows for alternate uses and does stipulate that the Board may approve a use of land even though that use is inconsistent with the use of that land for pastoral purposes, just as is the case for conservation use in the current Act, this power could be significantly constrained by the proposed objects of the Act. This would likely prevent any activity that would require the exclusion of stock over a period of time or over a portion of a lease.

The Objects of the Act should specifically and explicitly provide for the preservation of functional ecosystem, including the protection of indigenous flora and fauna, as well as recognising conservation of natural systems as a legitimate land use on pastoral leases. This could be achieved by adding a new object as follows; to prevent the degradation of the capacity of the land and its indigenous plant and animal life. Additionally there could be a change to the proposed object of the Act to state the following; to provide a form of tenure of Crown land for pastoral **and land management** purposes. The definition of Pastoral purposes in the Act could then be changed to the following; **Pastoral and land management purposes** means the pasturing of livestock or other purposes to prevent the degradation of the land or enhance the capacity of the land.

7—General duty of pastoral lessees

This section now requires that land be proactively manage for pastoral purposes.

The Bill does not appear to accommodate land that is currently managed for conservation on pastoral leases. This includes 1,285,024 ha of Pastoral leases that are covered by a Heritage Agreement or require a Heritage Agreement (in relation to an approved SEB obligation or conditions of State and/or Federal funding for the purchase of the property). This includes properties such as Bon Bon and Boolcoomata (Bush Heritage Australia), Gluepot (Birds Australia), Witchelina and Hiltaba (Nature Foundation).

There is also approximately 1,421,708 ha that are currently managed for conservation on a voluntary basis. Examples include areas like Arkaroola (Spriggs Family), Arid Recovery (BHP), Kalamurina (Australian Wildlife Conservance) and Yankannina (Operation Flinders).

Under the current Act there is already 2,706,732 ha being managed for conservation. Whilst this may sound significant, it only constituting less than 8% of pastoral land. With the new requirement to proactively manage the land for pastoralism, the management of these properties is likely to be inconsistent with the proposed Pastoral Land Act and therefore potential unlawful.

Given that the purchase of these leases included consent from the relevant Minister for use for conservation purposes, often with funding from Government and at times with the approval of the Pastoral Board itself with a nil stocking rate applied, the new Bill should provide a clear path forward for these lessees.

Areas managed for conservation provide critical refuges for species, particularly during dry times, which can sustain populations vital for ecosystem resilience and productivity. Therefore, areas dedicated for conservation are essential to protect and sustain the longevity of the pastoral industry. However, as can be seen in the Attached map, a vast majority of pastoral leases are located in regions where less than 10% of the land is protected for conservation. Such low levels of conservation threaten the survival of native species, particularly under the growing pressure of climate change and their loss will compromise the sustainability of the rangelands and pastoral industry.

The new Pastoral Land Act should ensure that lessees should not be required to act inconsistently with other legislation such as the Native Vegetation Act or Landscapes SA Act and should not be required to stock land that may result in land degradation issues. Therefore, subject to the approval of the Pastoral Board or Minister, a lease or portion of lease, where pastoralism is considered inappropriate or undesirable, should be exempt from the requirement to be proactively managed for pastoral purposes. Specific reasons for an exemption to apply might include conservation, land rehabilitation or if the land is not considered suitable for pastoral purposes.

11—Minister may develop policies and guidelines

The draft Bill allows for the development of policies and guidelines by the Minister. This section stipulates that the policies or guidelines must be made publically available. However, no information is provided regarding how the guidelines or policies will be developed, adopted or varied, what consultation is required to occur or what affect they may have particularly in relation to decision making by the Pastoral Board.

To ensure that these policies and guidelines are consistent with other pieces of legislation, there should be requirements to consult with relevant agencies and bodies, such as the Native Vegetation Council. The Native Vegetation Act includes such requirements, where guidelines are being developed or relating to applications to clear native vegetation, where it affects pastoral land, the Pastoral Board must be consulted. Reciprocal requirements in the Pastoral Land Act would ensure consistent and efficient decision making.

The draft Bill should provide further details relating to the requirements for the development, adoption or variation of guidelines or policies, consultation that is required and the effect of these policies and guidelines, particularly in regard to the Pastoral Board. Section 25 of the Native Vegetation Act provides an example of how this could be developed.

12—Minister to be notified of rights under other Acts

This section requires that before any rights can be established under another Act on Pastoral land, the Minister must be notified.

This may result in unnecessary administrative burden where there might be an application for approval to the Minister or the Pastoral Board for the same activity. PIRSA should ensure that the regulations exempt the requirement to notify the Minister where the same activity requires the approval of the Minister or the Pastoral Board.

13—Pastoral Board

This section now requires a majority of members, including Presiding Member to be pastoralists (currently only two members are required to be a pastoralist). It also does not require that any of the members have knowledge, involvement or experience in ecology, the environment or conservation. Environment Minister and the Conservation Council no longer nominate a member.

Given that the Pastoral Lands occupy over 40% of the State, and it is covered with native vegetation, which is the resource that pastoral industry relies upon, it is of great concern that the Board does not have a requirement for members to have knowledge or experience in rangeland ecology.

It is also concerning that a majority of members must be active pastoral lease holders. This potentially creates an inherent conflict of interest, in which the industry is under self-regulation. This is of concern as decisions of the pastoral board will have significant consequences for other areas of government, such as the requirements to establish offsets under the Native Vegetation Act. Therefore, good governance arrangements will be very important.

The makeup of the board should be skills and knowledge based, with a requirement that at least one member has knowledge and experience in rangeland ecology. Pastoralists should be limited to a maximum of two positions on the board.

25—Conditions of pastoral leases

The general conditions include the requirement for pastoralist to proactively manage land for pastoral purposes.

This presents the same issues as discussed in relation to Section 7 – General duties of the lessee.

Noting a failure to comply with conditions of a lease is grounds to cancel a lease and may be considered an offence. Therefore, a failure to stock land under the new Act could result in the Board taking compliance actions against a lessee, refusing the extension of a lease or potentially cancelling a lease.

This condition could also limit compliance actions that could be taken by the Board in relation to the degradation of land. For example, if over grazing resulted in significant

degradation of the land, it might be appropriate to issue a compliance notice to destock the land. However, such a notice would be at odds with the general duties of the pastoralist and the conditions of a Pastoral Lease to proactively manage land for pastoral purposes, and could reasonably be considered unlawful.

There should be exemptions from the requirement to proactively manage land for pastoralism where appropriate to do so, subject to the approval of the Board or the Minister.

25—Conditions of pastoral leases

The general conditions prevent the land being used for a purpose other than pastoralism, except with the prior approval of the Minister. This appears to be a duplication of the authority of the Board who approves the alternative land use.

It seems unnecessary to have two authorities making decisions for the same activity under the same piece of legislation. It will likely result in unnecessary administrative processes.

The Bill should be amended to provide for an internal referral process, thereby avoiding the need for two separate approvals. For example, it could state that the Board must not approve an application for an alternate use without first consulting with the Minister (or vice versa).

25—Conditions of pastoral leases

The land management condition establishing stock maximums has not been maintained in the draft Bill.

Whilst the stock maximums may be a crude means of limiting over grazing, it does provide an indication to potential purchasers of a lease of the likely carrying capacity of the land and allows the vegetation to recover in seasons of high rainfall. The removal of stock maximums could result in significant degradation of land. Whilst it is noted that the draft Bill is intended to introduce new and remote monitoring methods, these methods need to be adequately resourced and may still take time to detect impacts of overgrazing. Significant and irreversible degradation of the rangelands from overgrazing can occur in a short period of time, therefore in the absence of stock maximums, the reliance on currently unproven and potentially unfunded monitoring methods presents a significant risk.

The NVC suggest retaining stock maximums or a similar such measure that clearly protects against over grazing, at least as a transitional measure until the monitoring methods have been fully developed and shown to be effective.

25—Conditions of pastoral leases

Conditions of the draft Bill require a lessee to maintain **adequate** infrastructure required to undertake pastoral purposes. This is a change from the current Act which requires the maintenance of **existing** infrastructure.

This change potentially requires waterpoints to be established and maintained even if they are not going to be used. This could result in increased grazing pressure in the rangelands from unnecessary artificial watering points.

This condition should be changed so that it only relates to land that is actively being used for pastoral purposes.

25—Conditions of pastoral leases

The existing land management condition requiring areas to be closed off for the purpose of rehabilitation (Section 22(1)(b)(vi)) has not been including in the draft Bill.

It is unclear why this has been removed. It would seem an appropriate action in order to allow the recovery of land that has been degraded. The absence of this condition may prevent appropriate compliance actions being taken.

PIRSA should consider reinstating this condition.

25—Conditions of pastoral leases

The existing land management condition requiring compliance with the management plan established under the Arkaroola Protection Act (Section 22(1)(b)(vii)) has not been included in the draft Bill.

It is unclear why this has been removed and what affect that might have. NVC requests PIRSA provide advice regarding the reason for its exclusion and that in the absence of a compelling reason, that it be included in the new Act.

27—Alternative land uses

This section stipulates that the Board may approve the use of land for a purpose other than pastoralism. The Board may approve a use of land for an alternate use even though that use is inconsistent with the use of that land for pastoral purposes. This approval may be subject to conditions agreed to by the lessee.

The concern with this section relates to the word *may*. This implies discretion of the Board whether to approve an alternate use of land. The Board will only be guided by the objects of the Act, which emphasise the use of the land for pastoralism. Therefore, there is a real potential that the Board may decide that the exclusion of stock from land for an extended period of time or over a certain portion of a lease may be substantially at odds with the objects of the Act and could reasonably refuse any application to manage land for conservation.

The Board could also elect to impose conditions that effectively prevent the land from being used for purposes such as offsets under the Native Vegetation Act or EPBC Act. For example, the Board may impose a condition that stock must not be excluded for a period greater than 5 years. Such a requirement would be at odds with a Heritage Agreement and Management Agreements which remain on the land indefinitely.

The Act should clearly stipulate what matters the Board will consider when assessing an application for an alternate land use. This could include Policies that have been developed by the Minister which would then be binding on the Board. The Act should also clearly state that the Board can not unreasonably or capriciously refuse or withhold consent.

Transitional arrangements

The transitional provisions of the draft Bill stipulates that any consent that has been granted by the Minister remain in effect, but similar such transitional provisions have not been provided for in relation to any consent granted by the Pastoral Board.

The absence of transitional provisions for any consent of the Board may mean that lessees need to reapply for alternate land uses that have already been approved. This seems inconsistent and unnecessary. Lessees who have acted in accordance with existing requirements should have their approvals preserved.