

GOLDFIELDS PASTORAL ACCESS PRINCIPLES

PREAMBLE

- I** The signatories to these principles recognise:
- the importance to Aboriginal people of having access to traditional lands, including lands that are the subject of pastoral leasehold; and
 - the importance to pastoralists of being able to use and enjoy their pastoral leases in a secure and efficient manner.
- II** The purpose of this document is to establish broad principles that will assist pastoralists and Aboriginal people to develop agreements providing access to pastoral leases in the Goldfields region in a manner that is consistent with the principles recognised by the parties in item I of this preamble.
- III** These principles identify issues for pastoralists and Aboriginal people in terms of their relationship with each other and the land the subject of the pastoral lease, recognising that much goodwill exists between the parties.
- IV** Practical and flexible arrangements and more detailed agreements between Aboriginal people and pastoralists are needed to ensure workability and on-going relationships.
- V** The principles set out in this document are not binding or exhaustive and are subject to the laws of the Commonwealth and the State of Western Australia.
- VI** These principles are without prejudice and are intended to have general application irrespective of the outcome of any native title proceedings.
- VII** These principles are intended to facilitate the making of agreements between Aboriginal people and pastoralists.

PRINCIPLES

1. Identification of rights

Pastoralists have rights as pastoral lessees under the Land Administration Act (WA) including to undertake:

- the commercial grazing of stock;
- agricultural, horticultural or other supplementary uses of land essential to or normally carried out in conjunction with the grazing of stock; and
- activities ancillary to the activities mentioned in paragraphs (a) and (b).

Aboriginal people:

- claim native title and may have native title rights and interests in respect of pastoral leasehold land;
- have certain rights in respect of pastoral leasehold land under the Land Administration Act; and
- have traditional responsibilities to look after country.

It is important to clearly identify the rights of the parties to the extent that they coexist.

The rights and interests of Aboriginal people can be broadly categorised as cultural or customary, including but not limited to, camping, hunting, utilisation of some resources for traditional purposes, caring for country and the transmission of cultural knowledge.

The rights of the pastoralists can be broadly categorised as the use and management of the land for pastoral purposes in accordance with the Land Administration Act and the pastoral lease conditions.

In addition, both pastoralists and Aboriginal people may have other aspirations in relation to the land. These issues may require further discussion.

2. Relationship between rights

In accordance with the general law, pastoralists' rights prevail over any native title rights. It may be desirable to set out a process whereby any conflict between the rights of Aboriginal people and pastoralists can be resolved.

The parties, in exercising their rights, will be expected to act reasonably and have regard to the rights of the other party.

The harmonious exercise of the rights of Aboriginal people and the rights of pastoralists requires commitment to achieving long-term relationships based on goodwill, trust and mutual respect.

There is a need for open communication and information exchange.

3. Identification of parties

In order that any agreement can be properly managed, the parties with rights have to be clearly identified.

For Aboriginal people, it is desirable that those who have rights in relation to particular pastoral leases be identified. The parties need to bear in mind that the group will change (for example through births, deaths and marriages) over time. Nevertheless there are a number of ways that the spirit of this principle can be achieved. For example, the parties may wish to maintain a register of adult Aboriginal people who have rights under the agreement.

It is also desirable that the pastoralists who have rights in relation to particular pastoral leases be identified. The parties need to bear in mind that the persons or entities who hold a pastoral lease may be different from the people who manage the pastoral lease on a day-to-day basis.

Consideration may need to be given to how any agreement will deal with visitors of the Aboriginal people.

4. Notification requirements

Notification may be necessary prior to access to the pastoral lease for the proper management of the pastoral business. However, this requirement should be balanced with the practicality of not requiring Aboriginal people to abide by unrealistic requirements and timeframes.

It may be necessary for the pastoralist to notify the Aboriginal people of some development undertaken by the pastoralist that would significantly affect the rights of the Aboriginal people.

Notification should be dealt with in a pragmatic and flexible manner which reflects the existing relationships.

5. Limitations on use and enjoyment/obligations

Any limitations on the use and enjoyment of rights by the pastoralist and the Aboriginal people should be clearly articulated without imposing obligations that are too onerous and incapable of enforcement. For example, matters that could be dealt with include fires, firearms, dogs, gates, water, roads, litter and heritage sites, and cultural activities.

Pastoralists also accept that they may need to respect the privacy of Aboriginal people carrying out cultural activities.

6. Restriction on access or activities

Aboriginal people accept that sometimes the efficient operation of the pastoral business will result in some restrictions or limitations being placed on access from time to time; for example, mustering, regeneration programs, etc.

The parties acknowledge that there may be circumstances that give rise to a desirability to exclude, on a temporary or permanent basis, certain areas or activities from access—for example, the homestead area, heritage areas, rehabilitation areas, areas where dogs and/or firearms are not permitted—or to give effect to other reasonable pastoral management practices.

The parties will be expected to act in a reasonable manner and have regard to the rights of the other party.

7. Sites of significance

The pastoralist must recognise and protect sites of significance in accordance with the law. The parties will cooperate to make this possible.

8. Management structures

It is recognised that there may need to be an Indigenous Body Corporate or other entity to manage the agreement on behalf of Aboriginal people. The pastoralist may also need to consider how to facilitate the implementation of the arrangements.

9. Dispute resolution

The agreement should provide for a practical and workable dispute resolution mechanism.

10. Variation of terms of agreement

In order to ensure flexibility, the agreement should contain provision for the variation of the agreement to take into account changing circumstances and conditions.

11. Insurance and indemnity

It may be desirable for the agreement to provide for public liability insurance and/or contain mutual indemnity clauses.

12. Assignment

It may be desirable for the agreement to provide, that in the event that the pastoral lease is transferred, the transferee is bound by the agreement.

13. Confidentiality

It may be desirable for the agreement to identify information that is to be kept confidential; for example, sites of significance and commercially sensitive material.

14. Communication

In order for any agreement to be effective, it is important that the parties have a clear means of communication regarding matters affecting their interests which might include:

- the nomination of a representative to act on the parties behalf;
- the type of matters to be advised;
- contact details for the party or their representative; and
- an agreed form of communicating.

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