

Land and Public Works Legislation Amendments
Department of Planning, Lands and Heritage
Perth WA 6001
By email: LAA2022@dplh.wa.gov.au

Level 3 329 Collins Street
Melbourne Victoria 3000

info@alca.org.au

ABN 80 637 680 310

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Dear Land and Public Works Legislation team,

RE: Submission to Proposed Policy Framework, Diversification Leases on Crown Land

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the Western Australian Government's consultation on the *Proposed Policy Framework Guiding the Use of Diversification Leases on Crown Land*.

Please note that ALCA is happy for this submission to be published in full.

About the Australian Land Conservation Alliance

The Australian Land Conservation Alliance is the peak national body representing organisations that work to conserve, manage and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity and influence of private land conservation to achieve a healthy and resilient Australia. Our eleven members are (with those operating in WA in bold):

- **Australian Wildlife Conservancy**
- Biodiversity Conservation Trust NSW
- **Bush Heritage Australia**
- **Greening Australia**
- **Landcare Australia**
- Nature Foundation
- Queensland Trust for Nature
- South Endeavour Trust
- Tasmanian Land Conservancy
- **The Nature Conservancy Australia**
- Trust for Nature (Victoria)

ALCA land conservation efforts stretch across over 3 million square kilometres with more than 3,000 landholders. We have over 50,000 supporters and our combined annual turnover exceeds \$200 million. Together ALCA and its members address some of the most pressing conservation issues across the country, including restoring endangered ecosystems, building the protected area estate, tackling invasive species, expanding private conservation finance and funding and using nature-based solutions to tackle climate change.

Through their active land management, ALCA member organisations are deeply embedded in rural communities and economies, providing jobs, securing significant regional investment, and safeguarding remaining native habitat, with its many positive spillover effects for community, wellbeing, and food security. We seek to demonstrate the role and value of private land conservation as a cornerstone of the Australian economy.

ALCA has two members who currently hold pastoral leases and manage land for conservation within Western Australia: the Australian Wildlife Conservancy and Bush Heritage Australia.

Some ALCA members are statutory entities; the views expressed in this submission do not necessarily represent the views of the Government administering those statutory entities.

Summary

Whilst the escalating impacts of the climate crisis have taken hold within the Australian public consciousness, the parallel crisis facing our natural world is less widely known. And yet, the World Economic Forum has already declared nature loss “a planetary emergency”¹ with four of the top eight most severe risks on a global scale over the next ten years identified as environmental risks²:

“Humanity has already wiped out 83% of wild mammals and half of all plants and severely altered three-quarters of ice-free land and two-thirds of marine environments. One million species are at risk of extinction in the coming decades – a rate tens to hundreds of times higher than the average over the past 10 million years....

Human societies and economies rely on biodiversity in fundamental ways. ...over half the world’s total GDP – is moderately or highly dependent on nature and its services.”³

The scale and devastation of the unfolding nature crisis dwarfs all but the very biggest issues facing our nation – and rivals them in importance.

As per the British Government’s Dasgupta Review:

“We are facing a global crisis. We are totally dependent upon the natural world. It supplies us with every oxygen-laden breath we take and every mouthful of food we eat. But we are currently damaging it so profoundly that many of its natural systems are now on the verge of breakdown.”⁴

Indeed, in 2021, Australian scientists confirmed evidence that already 19 of Australia’s ecosystems have either collapsed or are collapsing⁵.

By both global and Australian standards, Western Australia’s Crown land estate is huge. **Diversification leases provide a great potential opportunity for upscaled conservation efforts within Western Australia’s Crown land estate. This includes the potential to create both the certainty and the pathways required to drive much-needed investment in conservation. Scaling up conservation is squarely in the public interest.**

The proposed Policy Framework and accompanying summary of proposed legislative amendments to the *Land Administration Act 1997* (WA) do not reflect the initial encouraging signals that the conservation of habitat and biodiversity would feature prominently, and that its value as a land use would be elevated. There is significant opportunity to strengthen this.

Subject to the important sensitivities of environmental conservation, the Government’s efforts at encouraging renewable energy at-scale within diversification leases are both important and welcome in helping transition Australia’s fossil-fuel dominated domestic and export economy into a model that causes less damage to our global climate and human wellbeing.

¹ See: World Economic Forum, January 2020; <https://www.weforum.org/reports/nature-risk-rising-why-the-crisis-engulfing-nature-matters-for-business-and-the-economy>

² See: World Economic Forum, Global Risks Report 2022; https://www3.weforum.org/docs/WEF_The_Global_Risks_Report_2022.pdf; the risks are climate action failure (1st); extreme weather (2nd); biodiversity loss (3rd); human environmental damage (7th); natural resource crises (8th).

³ See: World Economic Forum, *Nature Risk Rising: Why the Crisis Engulfing Nature Matters for Business and the Economy*, January 2020; <https://www.weforum.org/reports/the-global-risks-report-2020>

⁴ See: p1, Dasgupta, P. *The Economics of Biodiversity: The Dasgupta Review*, HM Treasury, Government of the United Kingdom; <https://www.gov.uk/government/publications/final-report-the-economics-of-biodiversity-the-dasgupta-review>

⁵ See: Bergstrom et. al, ‘Combating ecosystem collapse from the tropics to the Antarctic’, *Global Change Biology*, 2021; <https://onlinelibrary.wiley.com/doi/10.1111/gcb.15539>

However, the connected but parallel environmental crisis – which is now increasingly understood – is just as important to address to sustain Australian and global prosperity, as well as to mitigate the impacts of a changing climate.

The Federal Government has recently publicly confirmed their own increasing recognition of this importance by committing to both domestic and global targets for the protection of 30% of Australia's seas and 30% of Australia's land by 2030⁶. As Australia's largest state, Western Australia sits in the box seat to capitalise on the potential for Federal Government co-investment into its public and protected area estate. However, if clear pathways for private conservation are not clarified and elevated within the structure of the new diversification lease, this opportunity may be lost and potentially redirected to other State jurisdictions.

Federal Government investment is not the only opportunity for conservation funding that may be foregone – international philanthropy, carbon market offerings with a biodiversity premium, and nascent but rapidly emerging biodiversity markets are all mechanisms that can be effectively leveraged. To do this will require that the new diversification lease can create certainty and a clear pathway for conservation investment.

The current drafting of the Policy Framework and legislative amendments do not clearly reflect ALCA's vision of a brighter environmental and economic future in Western Australia that the new diversification lease has the potential to deliver.

There is considerable concern at what the reforms may mean for the existing, long-term investments in the Western Australian conservation estate, including those in the state's pastoral lands, and consequentially, the implications for the Federal Government investment that helped underpin these assets and acquisitions. Safeguarding these existing investments is an at-minimum requirement for the conservation sector's support for the diversification lease reforms.

Recommendations

1. **As a minimum, the existing and future, long-term conservation investments in the Western Australian conservation estate by conservation landholders should be protected in any reform to the *Land Administration Act 1997* (WA).**
2. **That the Government, either by contractual agreement or legislation, provides a clear guarantee that existing and future long-term investments in conservation under pastoral lease will be guaranteed to continue – and not be subject to alternative land uses without their consent – should they be expected or required to convert to a diversification lease.**
3. **Conservation land use needs to be considered of parallel *and not subsidiary* importance to other land use types and there should be a mechanism which recognises that in some cases, the trade-offs favour environmental benefits to Western Australia.**
4. The Policy Framework and legislative amendments should provide both certainty and clear pathways for conservation land use; these are necessary conditions to drive commercial, philanthropic, and potential Federal Government investment.

⁶ Minister Plibersek, National Press Club Address, 19 July 2022; see: <https://minister.dccew.gov.au/plibersek/speeches-and-transcripts/national-press-club-address-minister-environment-and-water-tanya-plibersek>

5. The Policy Framework and legislative amendments should elevate the value and importance of conservation as a land use – for the public good and private benefit. Specifically:
 - a. Paragraph 2 of the Policy Framework should include the environment as a minimum right: “A *diversification lease* will co-exist with other rights, including mining, **environment**, native title, and the right for Aboriginal people to access unenclosed and unimproved parts of the lease”.
 - b. Paragraph 11 of the Policy Framework should either read: “Before a *diversification lease* can be granted by the Minister for Lands, the Minister for Mines and Petroleum **and the Minister for the Environment** must first approve of.”; or alternatively: “Before a *diversification lease* can be granted by the Minister for Lands, **where relevant**, the Minister for Mines and Petroleum **and/or the Minister for the Environment** must first approve of.”
 - c. Paragraph 12, should read: “a new approval will be required from the Minister for Mines and Petroleum **and the Minister for the Environment** before the Minister for Lands will consider approving the variation”; or alternatively: “**where relevant**, a new approval will be required from the Minister for Mines and Petroleum **and/or the Minister for the Environment** before the Minister for Lands will consider approving the variation.”
 - d. Paragraph 16 c) should include the Biodiversity Conservation Act 2016 (WA) as another key condition: “maintain the condition (soil, **native fauna**, and native vegetation) of the land in compliance with the Soil and Land Conservation Act 1945, **the Biodiversity Conservation Act 2016**, and the Environmental Protection Act 1986;”
 - e. Paragraph 22 should explicitly clarify that the right of a diversification lessee to develop and construct infrastructure is not inalienable and will be balanced against other policy considerations.
 - f. **The proposed new section of the Land Administration Act 1997 (WA)** on ‘Sharing of information about pastoral leases with other agencies’ should require that information must be disclosed when formally sought, and not just “may disclose”; i.e. “The Pastoral Lands Board and the CEO of the Department and the CEOs of each department assisting in the administration of the following Acts **must disclose, when formally sought**, information relating to the use, management or condition of the land under a pastoral lease for the purpose of performing a function under a written law and not for any other purpose.”
6. When applying for a diversification lease, all existing leaseholders should, in both the Policy Framework and legislative amendments, have a right of first option to apply via private treaty before being required to enter a competitive process. This right should not be subject to Ministerial discretion.
7. ALCA supports the proposed changes to section 97 of the *Land Administration Act 1997 (WA)* that broaden the membership of the Pastoral Lands Board to include conservation and Indigenous representation.
8. The proposed legislative amendments should be provided as an exposure draft for public consultation.

9. As a matter of good public policy, public transparency and accountability should be enhanced wherever possible in proposed legislative amendments.
10. As a broad principle, the Policy Framework and legislation should require that advice from the Minister for the Environment at least be sought on direct environmental matters. Specifically:
 - a. Paragraph 16 of the Policy Framework should read: “*All diversification lessees will be required to manage the soil and the vegetation on the land to the satisfaction of the Minister for Lands **with written advice from the Minister for the Environment***” (implicitly including the Minister’s department).
11. As a broad principle, the Policy Framework and legislation should further elevate the central role of Indigenous Australians in managing and developing Crown lands. Specifically:
 - a. It should be clarified that the list of considerations under Paragraph 3 of the Policy Framework is an “and” list and not an “or” list.
 - b. Paragraph 3 d) should read “If possible” rather than “If applicable”; “***If possible, the grant will provide social and economic opportunities to Aboriginal peoples/communities***”
 - c. The diversification lease itself should also require the consent of relevant Indigenous native title parties, and not just consent for each of the proposed land use changes. This should include any variations to a diversification lease.
12. As a broad principle, the Policy Framework and legislation should recognise the centrality of public interest in granting or varying diversification leases. Specifically:
 - a. Paragraph 8 a) of the Policy Framework should explicitly rather than implicitly recognise the importance of the broader community public interest and instead read “*the benefits to the State, **its citizens**, the relevant region or locality;*”
 - b. There should not be carve-outs from public interest safeguards. Grants of leases and for grants of options to lease as referenced in Paragraph 5 of the Policy Framework – i.e. all applications and potential grants – should be subject to the public interest safeguards contained within Paragraph 8, especially if in the ultimate legislation the Minister of Lands’ discretion is not meaningful fettered regarding grants of non-competing applications.
 - c. Whilst implicit, explicit clarity should be provided to confirm that Paragraph 20 of the Policy Framework does **not** include conservation land use; i.e. a diversification lease **can** be granted solely for conservation land use.
 - d. Paragraph 31 of the Policy Framework should clarify that in-perpetuity lease will not be entered in to.
 - e. Paragraph 40 of the Policy Framework should instead refer to “*infrastructure*” or “*infrastructure and related improvements*” rather than “*improvements*” to explicitly clarify that these improvements do not refer to environmental improvements such as improvement in soil quality, water quality, native vegetation cover, and the like.

Thank you again for the opportunity to contribute to the Western Australian Government's consultation on the *Proposed Policy Framework Guiding the Use of Diversification Leases on Crown Land*.

ALCA looks forward to ongoing engagement with the Western Australian Government to ensure that its amendments to *Land Administration Act 1997* deliver for leaseholders, guarantee existing investments in conservation on Crown land, and provide the certainty and pathways required to drive and leverage much-needed commercial, philanthropic and Federal Government investment in conservation.

Australian Land Conservation Alliance