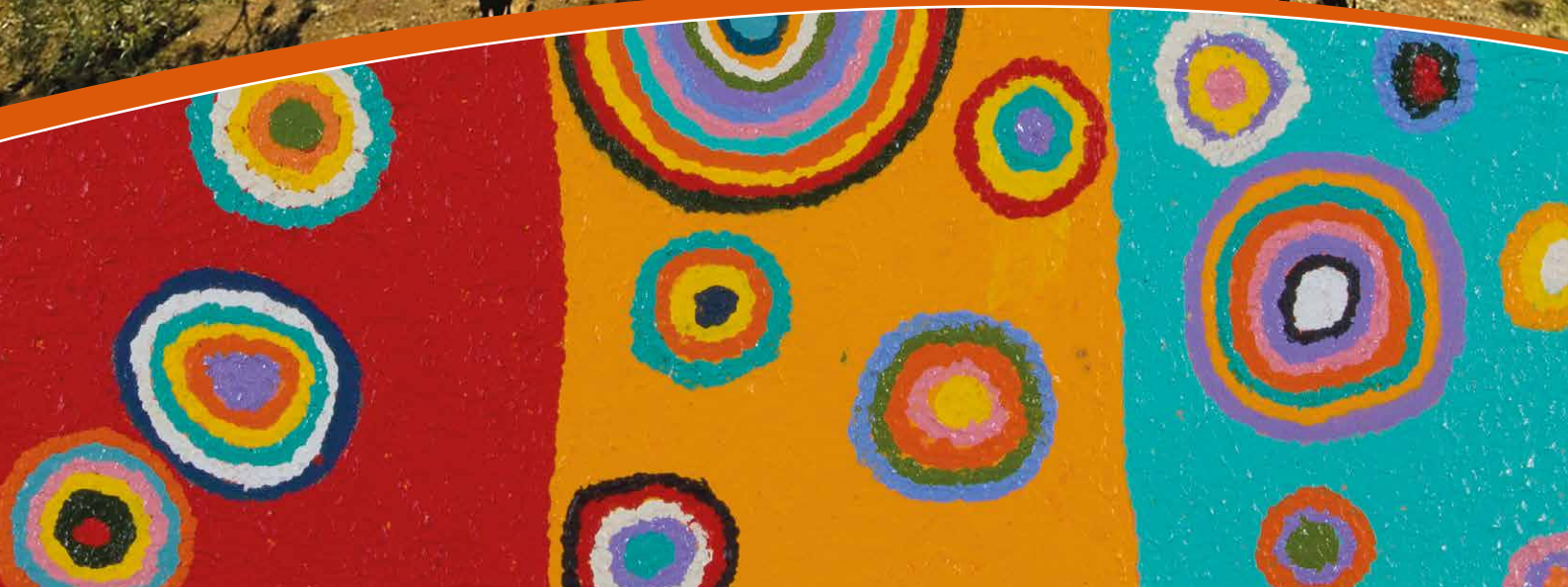




Department of  
**Primary Industries and  
Regional Development**

# Setting up for success

Business model opportunities for  
Aboriginal pastoral businesses







**Above: Minister MacTiernan with Lexine Mourambine from Yallalie Downs.**

**Front cover: Miyidimaya, Karntimarta and Callawa, Clara Allen, Nyangumarta, 2018, Supplied by Spinifex Hill Studios**

# Minister's foreword

Aboriginal people have been important contributors to the pastoral industry since the beginning, first as workers and now increasingly as owners of pastoral properties.

In early 2018, in partnership with Yawuru, we held a forum in Broome to examine the ways to increase the production, profitability and employment of Aboriginal owned pastoral leases in the Kimberley and Pilbara.

Earlier this year, we held a roundtable meeting in Broome with senior pastoral industry representatives to address serious animal welfare issues during the harsh summer in the Pilbara and Kimberley.

We are learning from you that sometimes governance structures are simply not fit for the purposes of dealing with the commercial reality of running a pastoral enterprise.

A range of Aboriginal pastoralists – such as KAPCO in the Kimberley – are moving into commercial operations capable of attracting significant financial investment and providing a strong local pathway for jobs and economic development. This is possible with a strong governance structure and significant pastoral expertise embedded into the business.

Our Government wants to work to help Aboriginal pastoralists to get the right commercial structure, so that they can attract investment and create employment opportunities for their communities.

**Hon Alannah MacTiernan MLC**

Minister for Regional Development; Agriculture and Food

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# Pastoral industry

## Introduction

Aboriginal pastoral businesses in Western Australia generally operate on two types of land tenures - Aboriginal reserves and pastoral leases.

The Western Australian Aboriginal Lands Trust (ALT) is responsible for Aboriginal reserves proclaimed under Part III of the Aboriginal Affairs Planning Authority Act 1972. The reserves are for “the use and benefit of Aboriginal inhabitants”. The ALT can lease these reserves to Aboriginal Corporations or transfer the reserve to a managing body. There are 44 ALT reserves in the Kimberley and Pilbara regions.

Pastoral leases are owned by the WA Government and give the organisation or person leasing the land (the leaseholder), the right to graze livestock. The sale or purchase of a pastoral lease does not transfer ownership of the land, as the ownership continually stays with the WA Government. The Pastoral Lands Board (PLB) has joint responsibility with the Minister for Lands in managing WA pastoral leases.

## Business models

To successfully run a pastoral business, Corporations need good management and practical skills, equipment, livestock such as sheep or cattle, and access to capital (money for machinery, cattle and operating cash). There are a lot of legal responsibilities to consider when running a pastoral business, including land (rangeland) condition, animal welfare and taxation law.

Some organisations do not have all of the resources they need to run a pastoral business on their own, so they work together with other businesses. This allows them to share their resources, skills and expertise. Businesses can work together for a one-off, short project or for a longer time to share resources to achieve common long-term goals.



## What is the right business model for my business?

Communities that own pastoral businesses must undertake research to select the appropriate business model.

There are a variety of business model options in the WA pastoral industry that can be used to develop a profitable pastoral business. This Guide discusses those options and explains the pros and cons of each. Figure 1 outlines the business models that are currently being used in the Kimberley and Pilbara regions.

Different business models will work better for different businesses. Selecting the most appropriate business model depends on multiple factors such as the relationship between potential business partners, the length of the arrangement, what the project involves, and the goals and values of each business.

## Models in the Kimberley and Pilbara

The development of Aboriginal owned and, or managed pastoral businesses in WA is not a ‘one size fits all’ exercise, as lots of different models have been developed in recent years. The number of businesses with different models in the Kimberley and Pilbara are shown in figure 1. This also demonstrates the wide range of business models available to pastoral businesses in WA.



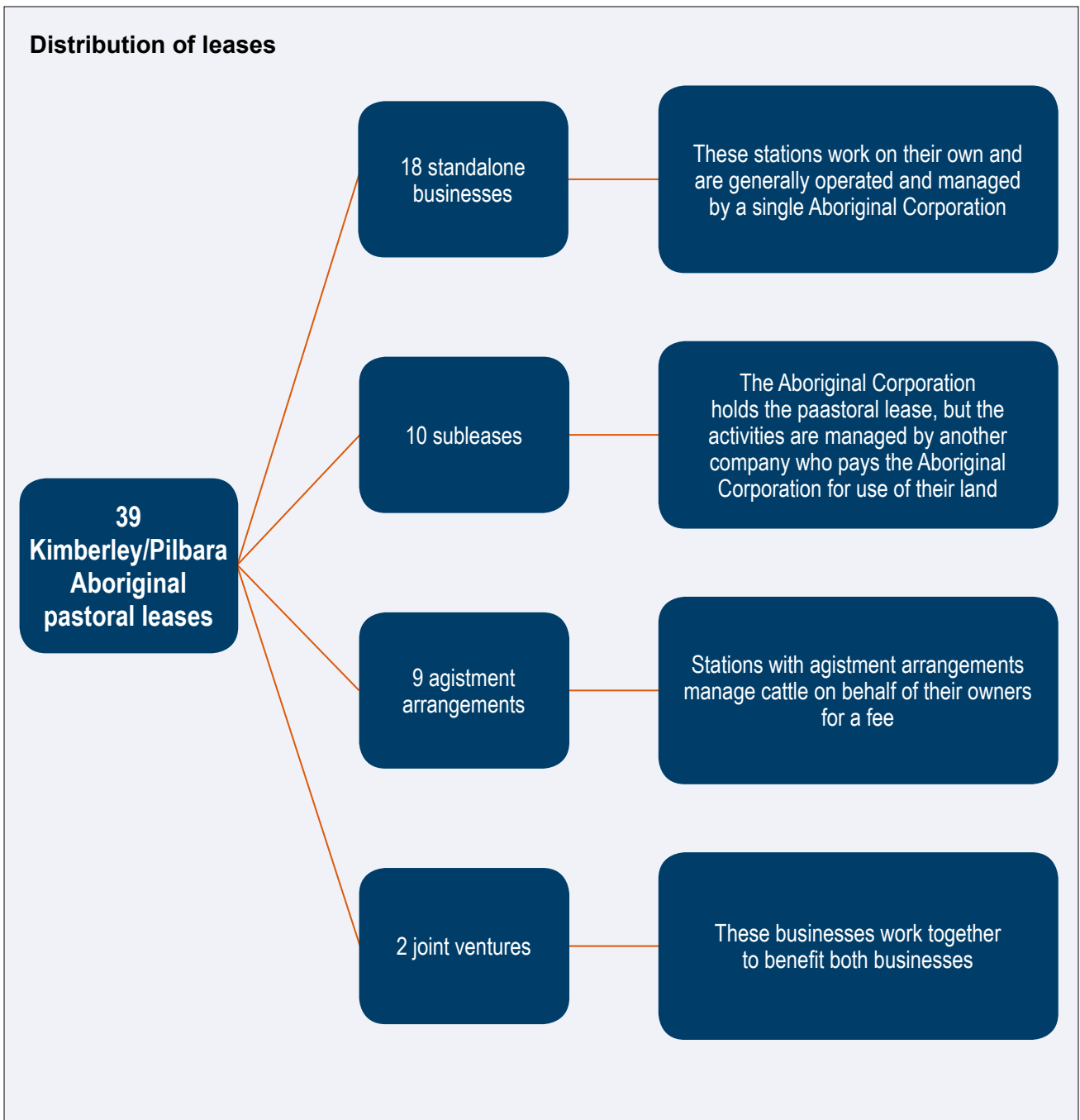


Figure 1: Distribution of 39 Kimberley and Pilbara Aboriginal leases by business management model (2018)

**Good to know!**

Aboriginal businesses involved in sublease, partnership or joint venture arrangements with other businesses are sometimes part of a larger coordinated program. These programs offer a bundle of services to each business involved, for example, a central administration service. This approach helps Aboriginal pastoral properties combine their resources and share them among their members, instead of each having their own systems and trying to run the business independently.

## Challenges

Aboriginal pastoral businesses face unique challenges which are not typically faced by non-Aboriginal pastoral businesses. Some of the key issues facing Aboriginal landholders include:

- **Limited access to finance**  
Many Aboriginal pastoral leases in WA were purchased on behalf of Aboriginal community groups and have limitations placed on them. This restricts their ability to access money as the land cannot be used as an asset when applying for finance, for example, a loan. Without this finance, it is difficult for the business to develop the property and build infrastructure which, in turn, makes implementing good herd and rangeland management practices challenging.
- **Decision making is complex**  
Aboriginal pastoral businesses are generally owned by Aboriginal Corporations with complex governance structures (boards, members, councils and committees). This can make decision-making a complex and drawn-out process.
- **Bad governance can block progress**  
It is hard for Aboriginal Corporations managing stations to manage, plan and develop their properties if they do not have good governance. Without good governance, development can be easily questioned or blocked by the board or directors, members or council.
- **Lack of appropriate training**  
Training on offer to people in the Aboriginal pastoral industry may not be presented in a culturally appropriate and accessible format.
- **Low opportunities for employment**  
Pastoral businesses only offer a small number of employment opportunities and this makes it difficult for an Aboriginal Corporation that is keen to provide employment to their members as well as run a profitable business.
- **The pastoral business is not the only business**  
Income generated from the business is returned to the Aboriginal Corporation where it can also be used for broader community objectives and not necessarily reinvested into the pastoral business.
- **Building a business is not the only goal**  
There are multiple reasons for being in business that are outside the running of a cattle business, such as achieving social, cultural and environmental outcomes.

# Pastoral business model options

## Legal structure of your business

We talk about the different business models used in the Aboriginal pastoral industry below, but first it is important to understand how your business is (or will be) legally set up and run. The most common legal structures are outlined below.

Legal Structure	For-profit or not-for-profit?
Company (Pty Ltd)	For-profit
Company Limited by Guarantee	Not-for-profit
Aboriginal Corporation	Can be for-profit or not-for-profit
Trust	For-profit
Partnership	For-profit
Sole Trader	For-profit

Table 1: The most common business legal structures in the Aboriginal pastoral industry

For-profit organisations aim to earn profit through their activities and distribute those profits to shareholders, partners, beneficiaries or owner, who are all part of the organisation.

Not-for-profit organisations, like an Incorporated Association, provide community services and generally do not operate for a profit or personal gain. Any profits made are reinvested into the organisation to achieve its aims and objectives.

Each legal structure has its pros and cons. **You should talk to an accountant or a lawyer before deciding on the best option for your business.** There are some questions in the 'Know your current situation' section at the end of this document to help you identify how your business works.



For more information, view Terri Janke and Company's free business resource available online, [Law Way: Indigenous Business & the Law](http://terrijanke.com.au/law-way-publication) (terrijanke.com.au/law-way-publication).

Before deciding to work with other pastoral businesses (e.g. subleasing land), it is really important to have initial conversations with potential partners and research their business practices. This is called doing your "**due diligence**". It will help you make sure they are legitimate and the right fit for your business before you agree to a sublease, partnership or joint venture.

# #1

## Do your due diligence first

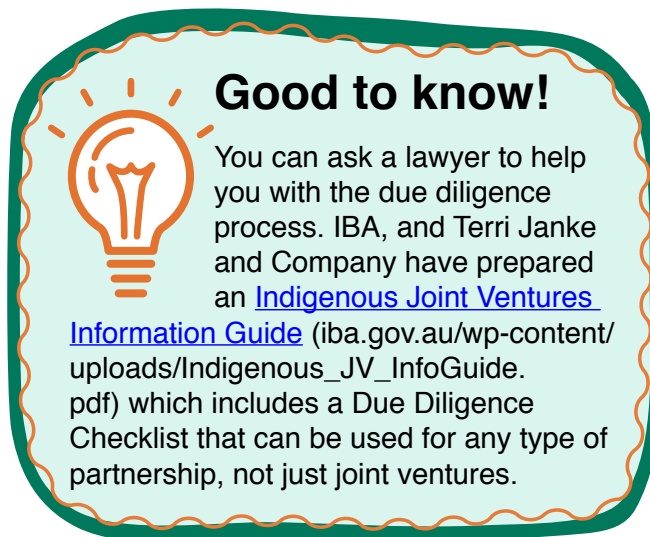
Due diligence means looking at all the details before you do a deal.



Due diligence is a business health check to find out about another business's history, work practices and reputation. If you find out that your potential business partner has a bad credit history and does not pay its bills or that they are known to be hard to work with, you might decide that it is better not to go into business with them.

Some key things to identify include:

- **Your needs:** What are the goals you are trying to achieve? What skills do you already have? What do you need help with?
- **The opportunity:** Is there an opportunity where working together with another business could increase the chances of success? Is it a short term or long term opportunity?
- **Your capabilities:** What can you bring to the table? Can you meet the requirements of the new opportunity? What are the gaps in meeting those requirements? Do you need to get assistance from outside your business?
- **Suitable partners:** What are you looking for in a business partner? Are your values and culture aligned with theirs? How well do you know them? What is their commitment to Aboriginal engagement? What is their past record of working with Aboriginal people and in the pastoral industry?
- **The benefits:** What is the business model and strategy? Is there a financial forecast for future income? How will you benefit financially from the arrangement?
- **The risks:** What are you liable for if the business model does not work out? Do you have a dispute resolution process in place to handle disputes? What happens if you want to end the arrangement?



---

## Sublease

### Overview

A pastoral leaseholder is an organisation or person that leases land from the WA Government for the purpose of running a pastoral operation. A sub-lease is when a pastoral leaseholder rents some or all of their land to another person or organisation - the sublessee. Put simply, the sublessee is the tenant and the leaseholder is the landlord. A sublease is a legal instrument and needs to be registered with [Landgate](https://landgate.wa.gov.au/) ([landgate.wa.gov.au/](https://landgate.wa.gov.au/)). Landgate is the statutory authority responsible for property and land information in WA. Subleases are the most common type of formal management arrangement in the pastoral industry.

The length of time a sublease is in place is called 'the term'. Subleases of pastoral land can be for any length of time, but must be at least 12 months. Typically, a sublease is for a term of five to 20 years, and there is usually an option for the sublease to be renewed for another term.

**Subleases generally have three main components:**

1. a cash component
2. an infrastructure improvement and maintenance component
3. a compliance component.

### 1. Cash component:

- A sublease dollar rate is agreed between the parties and is based on the commercial rate of the day.
- Rent is paid to the leaseholder at regular and agreed intervals, typically every six months.

### 2. Infrastructure improvement and maintenance component:

- An infrastructure development plan is developed by the parties and written into the sublease agreement to be carried out over the term of the sublease by the sublessee. The construction of permanent infrastructure that remains on the property can be negotiated and written into the sublease agreement.
- The sublessee is also expected to maintain infrastructure already on the land.
- Written reports with copies of invoices for what has been spent on infrastructure must be presented to the leaseholder at agreed times.
- The leaseholder should conduct regular infrastructure audits and sublease inspections.

### 3. Compliance component:

- The leaseholder is responsible for following the rules in the Lands Administration Act and any other laws and regulations that relate to the pastoral lease.
- The sublessee has to comply with the obligations under the sublease agreement.
- The sublessee also has to comply with other legal responsibilities for pastoral leases like animal welfare and employment laws.

### Sublease agreement

The leaseholder and the sublessee must talk about, prepare and sign a written sublease agreement that sets out the rules for the sublease. Traditional owners and Aboriginal communities should be consulted throughout this process.

A sublease agreement sets out the rights and responsibilities of both the leaseholder and the sublessee. It is a legally binding contract (meaning, you have to comply with what is written in the agreement or there will be legal consequences). If the sublessee does something wrong, the leaseholder can try and get compensation from the court for the loss or damage they have suffered and might be able to terminate (end) the sublease agreement as well.

**Q.** Who are the parties to a sublease agreement?

- A.** The leaseholder (e.g. Kimberley Aboriginal Corporation) and
- B.** The sublessee (e.g. Big Cow Cattle Company Pty Ltd).

Some standard terms that can be included in a sublease agreement are:

- |                      |                 |
|----------------------|-----------------|
| • area of land used  | • reporting     |
| and for what purpose | • cultural      |
| • duration           | considerations  |
| • extension options  | • employment    |
| • infrastructure     | • mentoring and |
| maintenance and      | training        |
| development          | • taxes         |
| • cattle management  | • payment       |

**Table 2:** Things that can be included in a sublease agreement



### Good to know!

It is important you do due diligence and make sure the company wanting to sublease land from you actually has the skills and ability to pay for the sublease, and complete the works set out in the sublease agreement. You can ask a lawyer to help you research the company and make sure they are being honest and above board.

## Legal requirements of a sublease

Separate legal entity?	Governing law?	Governing docs?	Board of directors?	Approvals?
No	No	Sublease agreement	No - purely commercial exchange between 2 organisations	Yes - Pastoral Lands Board and the Minister for Lands

Table 3: Legal requirements of a sublease

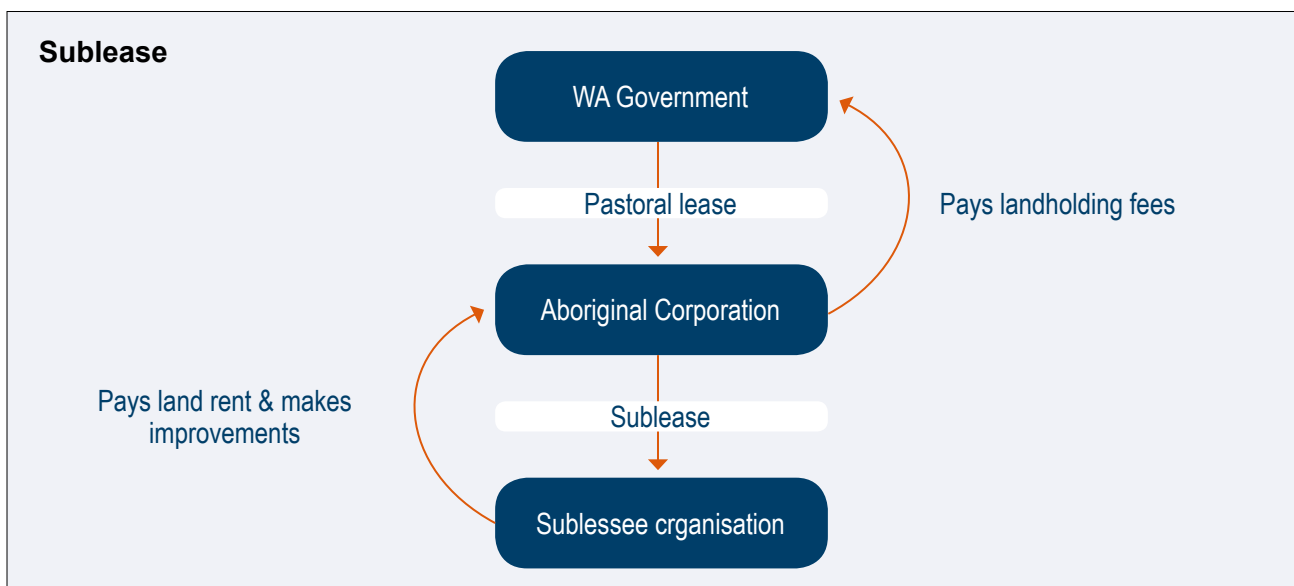


Figure 2: A basic example of a sublease arrangement





 Strengths	 Weaknesses	 Opportunities	 Threats
<ul style="list-style-type: none"> <li>Aboriginal Corporation keeps control of pastoral lease</li> <li>Corporation has power to instruct and audit Sublessee</li> <li>Corporation can negotiate favourable terms e.g. training</li> <li>ensures economic return for Corporation</li> <li>should ensure compliance with Pastoral Lease, laws, regulations and cultural obligations</li> </ul>	<ul style="list-style-type: none"> <li>legal costs to set up</li> <li>no laws governing relationship - only contract</li> <li>Aboriginal Corporation must still comply with pastoral lease</li> <li>Corporation must make sure sublessee is complying with sublease agreement and laws and regulations</li> </ul>	<ul style="list-style-type: none"> <li>sublessee can take on costs of infrastructure, maintenance and improvements, plant, equipment and wages</li> <li>skills and knowledge transfer</li> <li>employment, mentoring and training of local Aboriginal people</li> <li>can improve animal welfare and herd management</li> <li>industry exposure</li> </ul>	<ul style="list-style-type: none"> <li>sublessee does not comply with sublease or laws and regulations</li> <li>no knowledge transfer from sublessee to Corporation</li> <li>Corporation is not engaged in running business</li> <li>rent not paid on time or sublessee is declared bankrupt</li> <li>land degradation, herd mismanagement and animal welfare issues</li> </ul>

Table 4: Strength, Weaknesses, Opportunities and Threats (SWOT) analysis of a sublease arrangement





## 100% Sublease

### **K.L Taylor & S.A Taylor (family partnership) on Mowla Bluff Station with Ngi-Ngi Aboriginal Corporation**

The pastoral lease on Mowla Bluff station is owned by Ngi-Ngi Aboriginal Corporation. Ngi-Ngi members are from two communities.

Stuart Taylor and Kerri Leanne Taylor manage K.L Taylor & S.A Taylor, a family run cattle business (a partnership).

The Taylors entered into an unincorporated joint venture arrangement with Ngi-Ngi in 2011 for the management of Mowla Bluff station. Under the written joint venture agreement, the Taylors managed the property and supplied equipment and plant, while Ngi-Ngi supplied the lease, cattle and labour. The profits were distributed between the Taylors and Ngi-Ngi in accordance with the joint venture agreement.

Governance complications within Ngi-Ngi impacted the joint venture and as a result, Ngi-Ni and the Taylors decided to enter a five-year 100% sublease of Mowla Bluff station instead. Ngi-Ngi recognised they would need to change their own governance structure to allow positive change and growth for the business.

It was identified that the directors of Ngi-Ngi did not evenly represent the views of the two communities. To solve this, Ngi-Ngi decided that their eight director positions should represent the two communities equally. Four directors would be from each community, with one director representing each of the four family groups in each community. Directors are now appointed for a term of two years to ensure stability. This structure is represented in the diagram on the next page.

### **Sublease**

The Taylors and Ngi-Ngi entered into a sublease agreement which clearly outlined each of their roles and responsibilities. They included terms that the Taylors must employ Ngi-Ngi members on the property, and carry out infrastructure improvements and maintenance over the five-year sublease. The Taylors give a station report at Ngi-Ngi's Annual General Meetings and attend almost every directors' meeting to provide updates on the station.

The Taylors said that the good governance Ngi-Ngi has worked to build is the reason they have been able to overcome so many challenges. Ngi-Ngi's membership base of over 100 now understand that they have a say in what goes on in the Corporation and can use their votes to appoint directors that represent all of the families and communities equally.

Ngi-Ngi and the Taylors have established a good working relationship built on trust and honesty. Prior to entering the original joint venture with the Taylors, Ngi-Ngi was in a state of debt with a property that had not been managed for years. They now have good governance and a healthy trust account to support the Corporation's activities and values.

**All sublease agreements are different from one another. If you are thinking of entering a sublease, then you should seek assistance from the department's Aboriginal Economic Development program and get advice from your lawyer.**

### Mowla Bluff

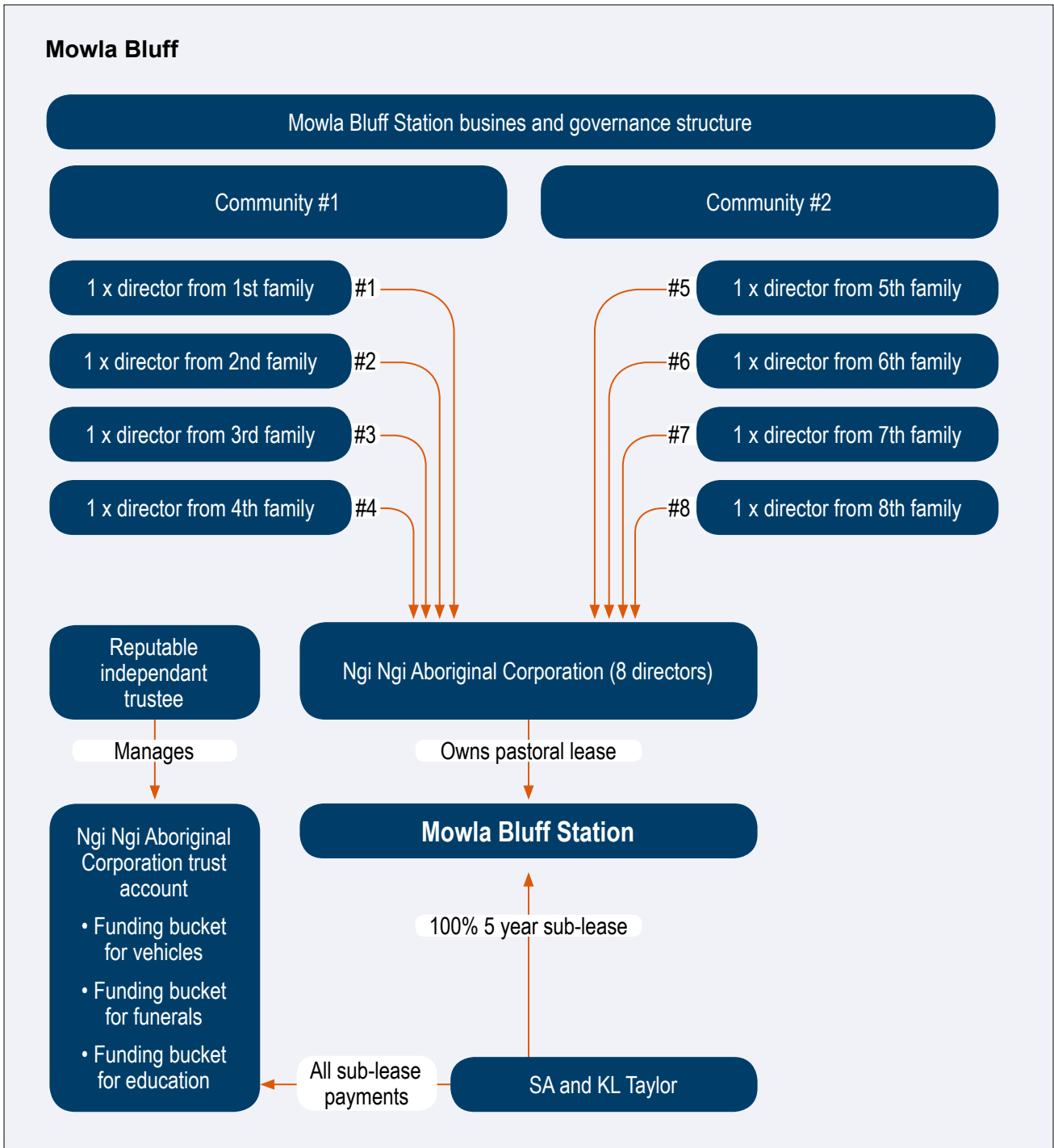


Figure 3: Mowla Bluff Station business and governance structure



## Agistment

### Overview

Agistment is the temporary grazing of livestock on someone else's land for a set period of time for a set amount of money.

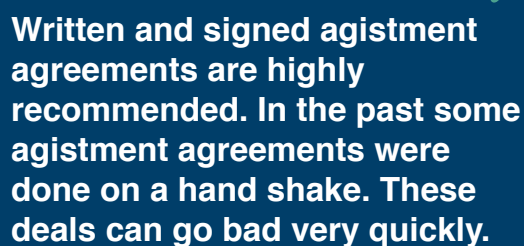
Similar to a sublease, a pastoral leaseholder might decide to rent out part or all of their pastoral lease for a set period of time for agistment. The person or organisation that is temporarily grazing their livestock is called the agistee and the landholder is the agistor. Put simply, the agistee is the tenant and the agistor is the landlord. Unlike a sublease, an agistment cannot be registered with Landgate.

### Agistment agreement

An agistment arrangement is generally less than 12 months and does not include infrastructure.

Agistment agreements have a number of benefits for leaseholders:

- the leaseholder can use and improve management of land they don't currently have livestock on
- the leaseholder can receive income without actually owning livestock
- the leaseholder can determine stocking rates, rents, time frames and responsibilities.



**Written and signed agistment agreements are highly recommended. In the past some agistment agreements were done on a hand shake. These deals can go bad very quickly.**

**Q.** Who are the parties to an agistment agreement?

- A.** The leaseholder/agistor (e.g. Kimberley Aboriginal Corporation) and
- B.** The agistee (e.g. Big Cow Cattle Company Pty Ltd).

Things that can be included in a written agistment agreement are:

- the area of land to be agisted
- what can and can't be done
- duration of agistment
- payment (rent)
- number and type of livestock allowed to be run on the land
- access rights for the agistee and the agistor
- responsibilities of each party
- maintenance of the livestock, fences and waters
- dispute resolution procedures

**Table 5: Things that can be included in a written agistment agreement**

Before signing an agistment agreement, a thorough inspection of the agistment area should be carried out. Photographs and notes should be kept just in case any disputes or problems come up in the future. Things to look out for may include:

- rangeland condition
- fencing condition
- water point condition – tanks, troughs, solar, windmills
- livestock currently on the area to be agisted
- any areas of concern.

Talk to neighbours, fellow leaseholders, community and stock agents to make sure you have up-to-date information about the agistment land.





## Short-term subleases, partial subleases and agistment

### Yougawalla Pastoral Company

Yougawalla Pastoral Company Pty Ltd (Yougawalla) is a large business that runs cattle across Yougawalla Station, Bulka Station and Margaret River Station. Yougawalla Pastoral Company has business arrangements with the following Aboriginal stations - Lamboo, Mount Pierre, Louisa Downs and Lake Gregory station.

The business began on Yougawalla Station with Haydn and Jane Sale. In an effort to increase their landholdings and herd, they looked for opportunities to expand their business and now have cattle on multiple Aboriginal stations. They have a variety of different sublease and agistment agreements in place with each of the Aboriginal stations. These agreements vary in duration and complexity.

### Sublease and agistment agreements

Yougawalla has a short-term agistment agreement with Mount Pierre station where they pay an annual cash sum to use the property for agistment purposes. The cattle under agistment are owned and managed by Yougawalla Pastoral Company.

Yougawalla has a partial sublease on Louisa Downs and Lamboo Stations. Yougawalla manages a portion of the property with their own cattle while the Aboriginal Corporations manage the remainder of their property and their own cattle. Partial subleases need to be approved by the WA Pastoral Lands Board.

The sublease agreements Yougawalla has with the Aboriginal Corporations on each station include multiple terms to benefit the Corporations and their members. For example, Yougawalla employs Aboriginal people from each of the Corporations and provides mentoring. Yougawalla also pays the sublease rent in the form of a cash contribution and through the construction of infrastructure which will be left on the property when the sublease ends.



**Aboriginal Corporations must make sure that the work they agreed on in the sublease agreement is actually getting done. Corporations can check the work is being done, and to an acceptable standard, by completing infrastructure and sublease inspections.**

Yougawalla has an annual inspection process which it completes with the Aboriginal Corporations, and the help of the department's Aboriginal Economic Development (AED) program, to make sure the work and infrastructure is being completed and to the right standard.

On Lamboo station, Yougawalla manages 75% of the property and the Corporation manages 25%. Over time, the area Yougawalla subleases will reduce allowing the Corporation to slowly increase the total area of land they manage. This allows them to increase their herd and area of land management at a rate that suits them and their capacity.

**Make sure you get professional legal advice and have your lawyer prepare the agistment agreement! Contact the department's Aboriginal Economic Development (AED) program for assistance.**



The AED program assisted ALT-owned Lake Gregory station seek long term investors for a sublease arrangement over 10-15 years through an open Expression of Interest (EOI) process. This process involved forming a community working group, getting the best possible industry advice and completing community engagement and property planning. The governance work and strategic planning done with the community has resulted in a multi-million dollar private commercial agreement with Yougawalla. This agreement will:

- create employment;
- establish brand new station infrastructure;
- ensure appropriate rangeland management;
- contribute to the regional economy and northern beef industry and;
- develop commercial contract management skills.

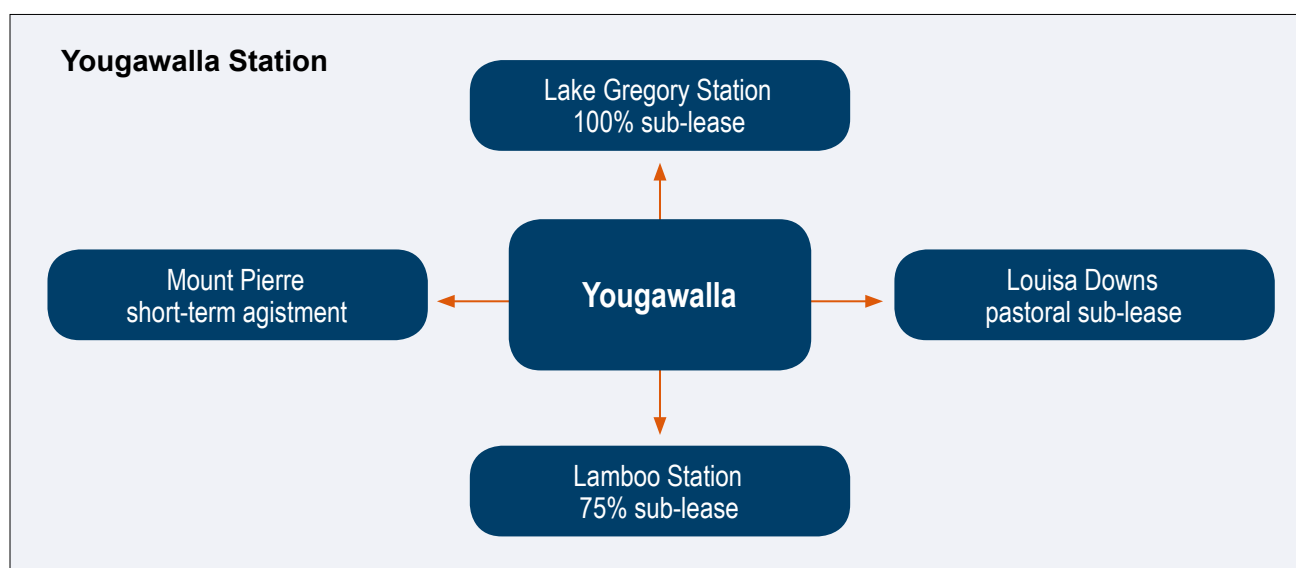


Figure 4: Subleases and agistment agreements between Yougawalla and Aboriginal pastoral stations

## Good to know!



An open Expression of Interest (EOI) process can be used in the pastoral industry to seek interest from potential business partners. The process is completely open, transparent and accountable. Anyone can express interest, not just a select few. This allows you to look at all the options and decide on the best for your business. The department's AED program can help you complete an open EOI process.



Lamboo Station pregnancy testing their herd as an outcome of the department's Business Improvement Grants

## Legal requirements of an agistment arrangement

Separate legal entity?	Governing law?	Governing docs?	Board of directors?	Approvals?
No	No	Agistment agreement	No - purely commercial exchange between 2 organisations	Yes - Pastoral Lands Board and the Minister for Lands

Table 6: Legal requirements of an agistment arrangement

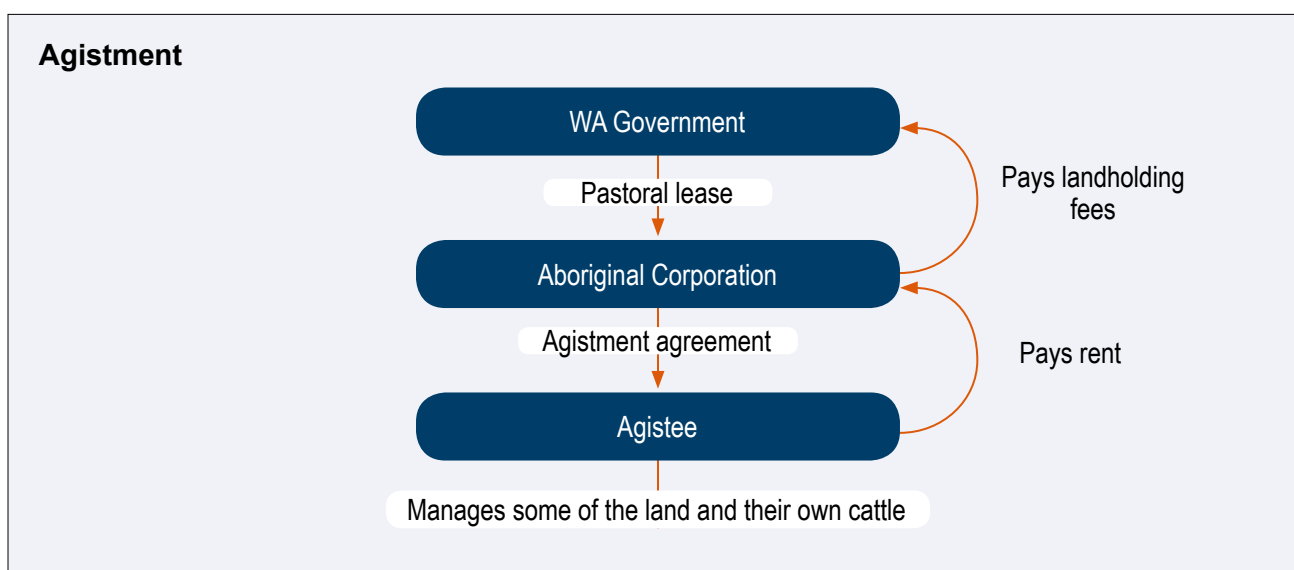


Figure 5: A basic example of an agistment agreement





 Strengths	 Weaknesses	 Opportunities	 Threats
<ul style="list-style-type: none"> <li>the Corporation can agist land for a flexible, short term, generally for up to two years</li> <li>extra income can be made for Corporation through agistment</li> </ul>	<ul style="list-style-type: none"> <li>legal costs to set up</li> <li>no laws governing relationship - only agreement</li> <li>the Corporation must make sure the agistee is complying with the agistment agreement and laws and regulations</li> </ul>	<ul style="list-style-type: none"> <li>allows use of country not being used</li> <li>allows country not being managed to be managed by an external party</li> </ul>	<ul style="list-style-type: none"> <li>the Corporation agrees to an agistment arrangement without a proper written agreement</li> <li>the agistee does not comply with the agistment agreement and laws and regulations</li> </ul>

Table 7: Strength, Weaknesses, Opportunities and Threats (SWOT) analysis of an agistment arrangement



## Partnership

### Overview

A partnership is a type of legal arrangement between two or more people or organisations. The partners manage a business together (jointly) and try to make a profit. The partnership can run the business under the names of the partners or register a new business name with ASIC.

A partnership is not a separate legal entity from each of the partners, unlike the structure of a company. The profits of the partnership go directly to each of the partners. The partnership does not pay tax on this income, and the partners each pay personal tax. Each partner is also personally responsible for all the debts of the partnership such as money, goods or services owing to other people or organisations under the name of the partnership.

In WA, partnerships have to follow the rules set out in the Partnership Act 1895 (WA). Before starting a partnership business, the partners need to agree on how they will work together. This should be done through a written partnership agreement that outlines:

- what each partner is bringing to the business (time, effort, money & assets),
- how profits and losses will be shared,
- what salary each partner will be paid, and
- how each partner will participate in management of the business.

Where there is no written partnership agreement, each partner owns equal shares of the partnership assets.



**It is always best and safest to have a written partnership agreement that has been prepared with the help of your lawyer and the department's AED program.**

### Good to know!



You need to think carefully about who you want to go into partnership with. The big risk with partnerships is that if your relationship goes bad, it can be expensive and stressful to exit the partnership. You could be left to pay all the debts of the partnership. Depending on the partnership agreement, one partner leaving can basically end the business.



Aboriginal Economic Development officer and representatives from Lamboo Station and Yallalie Downs at the Indigenous Cattleman's Workshop in South Australia

## Partnership agreement

A partnership agreement sets out the rights and responsibilities of each of the partners and is legally binding (meaning you have follow what is written in the agreement or there are consequences).

**Q.** Who are the parties to a partnership agreement?

**A.** Each of the partners - a partner can be an individual or an organisation.

Things that can be included in a partnership agreement include:

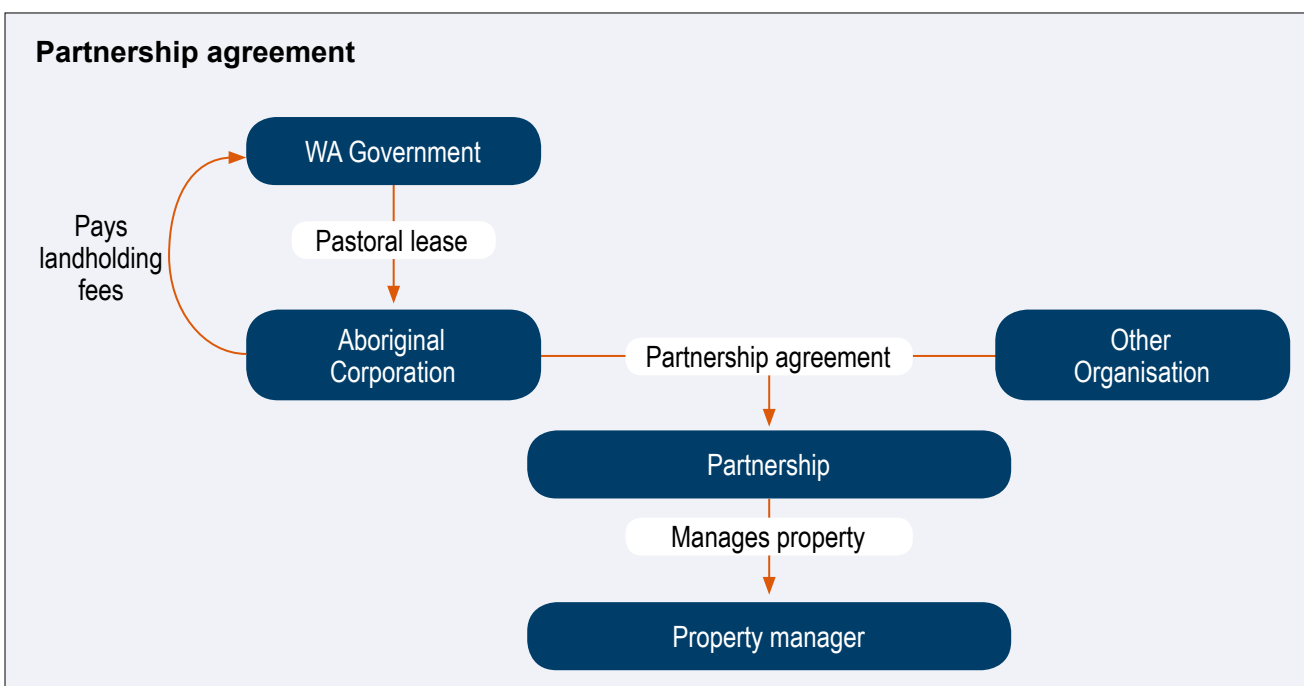
- responsibilities of each partner
- ownership of property and how it is divided
- how profits will be divided
- how losses will be shared
- salaries
- management - operations, responsibilities, meetings, etc.
- financial reporting
- new partners
- duration
- Laws & Regulations including the Partnership Act 1895 (WA)
- disputes
- ending or resigning from the partnership

**Table 8: Things that can be included in a partnership agreement**





## Legal requirements of a partnership

Separate legal entity?	Governing law?	Governing docs?	Board of directors?	Approvals?
No	Partnership Act 1895 (WA)	Partnership agreement	No - partners make decisions for partnership	Depending on the circumstances - the Pastoral Lands Board and, or, the Minister for Lands

**Table 9: Legal requirements of a partnership**



**Figure 6: An example showing how a partnership can be set up**

 <b>Strengths</b>	 <b>Weaknesses</b>	 <b>Opportunities</b>	 <b>Threats</b>
<ul style="list-style-type: none"> <li>• simple to set up</li> <li>• strong legal model</li> <li>• governed by established partnership law</li> <li>• minimal reporting requirements (to ATO only)</li> <li>• Aboriginal Corporation keeps control of lease</li> <li>• good for long-term relationships</li> <li>• shared control &amp; management</li> <li>• opportunities for tax planning</li> <li>• relatively easy to dissolve (end) and, or to recover assets</li> </ul>	<ul style="list-style-type: none"> <li>• legal costs to write partnership agreement</li> <li>• partnership is not a separate legal entity so each partner is responsible for debts &amp; liabilities incurred on behalf of the business by other partners</li> <li>• changes of ownership can be difficult and generally mean a new partnership has to be set up</li> <li>• requires at least one of the partners to have strong business knowledge</li> </ul>	<ul style="list-style-type: none"> <li>• sharing of costs of improvements to infrastructure, equipment and wages</li> <li>• directly involved in running of business on country</li> <li>• improved governance and capability to manage pastoral operations</li> <li>• industry exposure</li> <li>• capacity building &amp; employment for Aboriginal workers</li> <li>• improve animal welfare and herd management</li> </ul>	<ul style="list-style-type: none"> <li>• shared decision making increases potential for disputes</li> <li>• wrong choice of organisation or individual to partner with</li> <li>• Aboriginal Corporation has limited or no role in running of business but partner organisation uses partnership to get funding reserved for Aboriginal businesses</li> <li>• responsibility to pay all debts of partnership which could be incurred without Corporation's knowledge</li> </ul>

**Table 10: Strength, Weaknesses, Opportunities and Threats (SWOT) analysis of a partnership**

## Unincorporated Joint Venture

### Overview

Similar to a partnership, an unincorporated joint venture (JV) is an arrangement where businesses work together to share their resources, skills and expertise with one another so everyone benefits. Sometimes this arrangement is just for a specific project, and other times it is part of an ongoing partnership to work together to achieve common long-term goals.

An unincorporated JV is often set up for short-term projects and is based on a written joint venture (JV) agreement. Like partnerships, it is not set up as a separate entity and each JV partner must pay their own taxes etc. Unlike partnerships, the JV agreement does not have to comply with the Partnership Act 1895 (WA).

An unincorporated JV for joint management of a pastoral lease can range from 12 months to 5 years. If it is longer than 12 months, the terms that have been agreed by the JV partners should be reviewed each year.

A JV agreement sets out the rights and responsibilities of each of the parties and is legally binding (meaning you have follow what is written in the agreement or there are legal consequences). If a JV partner does something wrong, the other JV partners can try and get compensation from the court and may be able to terminate (end) the agreement.

A Management Committee has overall control and management of the JV and oversees the running of the business. Every JV partner usually has at least 1 representative on the Management Committee to make sure they have a say in what goes on.



## JV Agreement - Joint Management

Unincorporated JVs can be used for joint management of a pastoral business. A written JV agreement should be prepared outlining all the terms and conditions the JV partners agree to.

**Q.** Who are the parties to a JV agreement for joint management of a pastoral business?

- A.** The leaseholder (e.g. Kimberley Aboriginal Corporation) and
- B.** The joint manager (e.g. Big Cow Cattle Company Pty Ltd).

Generally, all money made from the joint management is deposited into a bank account with each JV partner needing to sign before money can be released to pay for expenses.

Profits are shared by the JV partners. Costs for running the business (e.g. shire rates) are paid before profits are put back into the business and following that, paid to the JV partners. How profits are managed is decided by the Management Committee.

Losses are also shared by the JV partners. Debts that each party has before the JV is set up are not the responsibility of the JV partners, however debts created once the JV is set up are (unless the JV agreement says otherwise).

It is a good idea for the Management Committee to prepare a management plan for the JV, so that everyone is working towards the same goals and objectives. This would include a schedule for infrastructure development and the associated costs.

Things that can be included in a written JV agreement are:

- area of land to be used and for what activities
- responsibilities of each JV partner
- employment and training
- infrastructure
- stock ownership
- herd management
- reporting
- plant and equipment
- insurances
- laws and regulations
- how to change the terms of the JV agreement
- desirable share of Aboriginal management committee members
- two-way knowledge transfer
- intellectual property
- dispute resolution

Table 11: Things that can be included in a written JV agreement

## Legal requirements of an unincorporated JV

Separate legal entity?	Governing law?	Governing docs?	Board of directors?	Approvals?
No	No	Joint venture agreement	No - Management Committee with representatives from each JV partner	Depending on the circumstances - the Pastoral Lands Board and, or, the Minister for Lands

Table 12: Legal requirements of an unincorporated JV



**If you are thinking of entering a joint venture, get professional legal advice about the arrangement and have your lawyer prepare the joint venture agreement for you!**

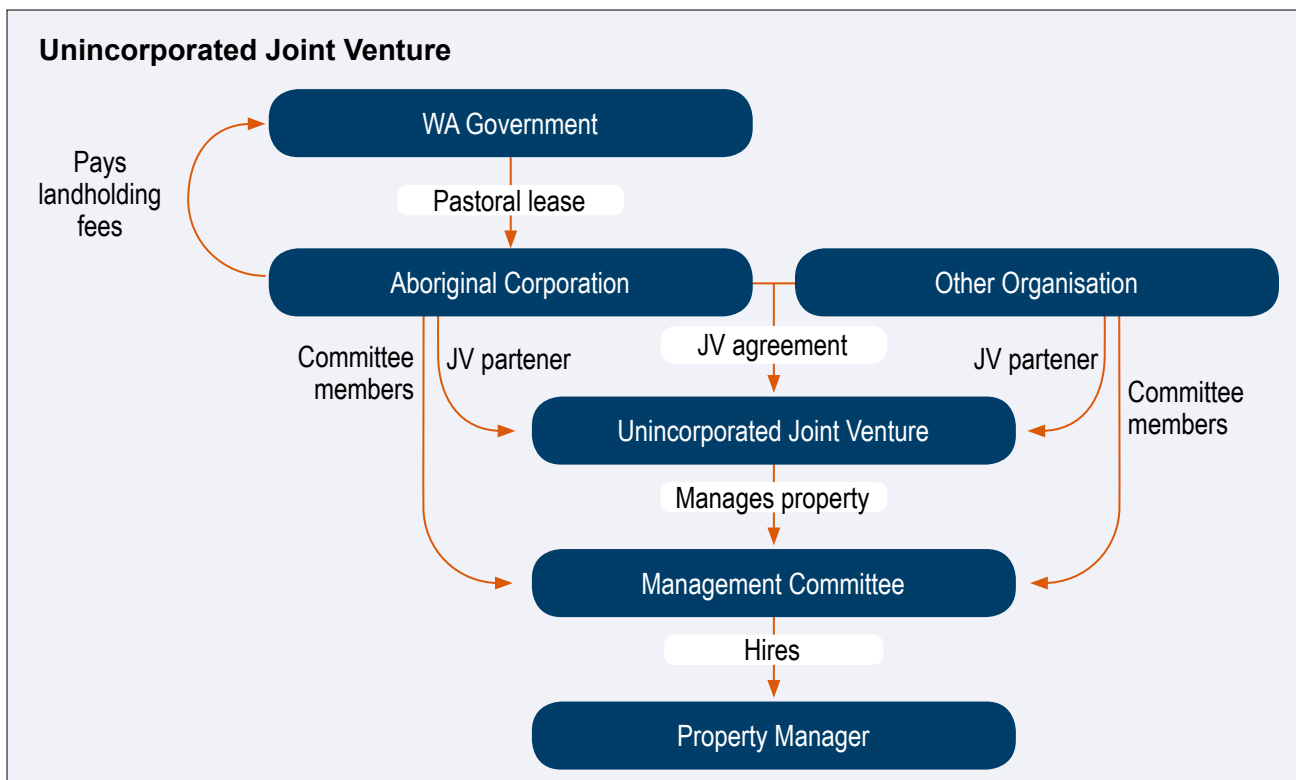






Figure 7: A basic example of an unincorporated joint venture

 <b>Strengths</b>	 <b>Weaknesses</b>	 <b>Opportunities</b>	 <b>Threats</b>
<ul style="list-style-type: none"> <li>• easy to set up</li> <li>• Aboriginal Corporation keeps control of lease</li> <li>• joint manager has to comply with JV agreement</li> <li>• shared control &amp; management with other JV partners</li> <li>• sharing of resources</li> <li>• no reporting requirements to external regulator</li> <li>• JV partners can decide how to split income</li> <li>• Corporation can negotiate &amp; enforce favourable terms in agreement</li> <li>• economic return for Corporation</li> </ul>	<ul style="list-style-type: none"> <li>• legal costs to write JV agreement</li> <li>• risk of being classified as a partnership if agreement not written properly</li> <li>• not a separate legal entity - no specific law regulates</li> <li>• cannot be registered with Supply Nation</li> <li>• Corporation must actively monitor joint manager compliance</li> <li>• responsibility to pay debts of JV</li> </ul>	<ul style="list-style-type: none"> <li>• sharing of costs of improvements to infrastructure, equipment &amp; wages</li> <li>• employment, mentoring &amp; training of local Aboriginal people and Corporation</li> <li>• skills &amp; experience transfer</li> <li>• build permanent infrastructure</li> <li>• improve animal welfare and herd management</li> <li>• improve Corporation governance</li> <li>• industry exposure</li> <li>• compliance with pastoral lease</li> </ul>	<ul style="list-style-type: none"> <li>• Corporation may not have as much control as under a sublease</li> <li>• few Aboriginal members of management committee</li> <li>• joint manager might not comply with agreement, laws &amp; regulations</li> <li>• no knowledge transfer from joint manager to Corporation</li> <li>• Aboriginal Corporation has limited or no role in running of business but JV uses business to get funding reserved for Aboriginal business</li> <li>• Corporation is not engaged in running of operations</li> <li>• financial and legal costs involved in dealing with disputes</li> <li>• joint manager is declared bankrupt</li> </ul>

## Incorporated Joint Venture

### Overview

#### What is the difference between an **unincorporated JV** and an **incorporated JV**?

A joint venture (JV) is where two or more businesses work together and share their resources, skills and expertise so each business benefits. In an incorporated JV, the businesses set up a new company together (generally a for-profit Pty Ltd company). In an unincorporated JV, the businesses do not set up a new company and work under a JV agreement instead.

The new company set up by an incorporated JV runs all of the operations of the business and is a separate legal entity from the JV partners. The businesses in an incorporated JV each own shares in the new company and are called 'shareholders'. The percentage of the company they each own is often based on the amount of assets (like cattle, land, plant and equipment) they put into the company at the beginning.

The company is controlled and managed by a board of directors. Every shareholder nominates at least one representative on the board of directors to make sure they have a say in the running of the business. Independent directors might also be asked to join the board for their industry advice and expertise.



### Good to know!

An **independent non-executive director** is an external person who has no relationship with the JV Company. It is useful to have an independent director on the board of a company or Aboriginal Corporation to provide special expertise and advice.

An incorporated JV company:

- is a completely new legal entity,
- is set up for long-term projects,
- protects the individual assets of the JV partners, and
- must follow the rules of its constitution, shareholders agreement and the *Corporations Act 2001 (Cth)*.

### Where does the money go?

It is recommended two bank accounts be set up in an incorporated JV company:

1. a working account
2. a trust account

Good financial governance arrangements will ensure that more than two directors' signature are needed to allow money to be taken and spent from those accounts.

Profits from the business can be returned to the shareholders based on the percentage of shares they hold in the JV Company - these are called 'dividends'. Dividends are only distributed to shareholders after all expenses are fully paid and an audit has been carried out on the company accounts.



**A good company will put profits back into developing the business first before paying it out to shareholders.**

## Management Company

### Kimberley Agriculture and Pastoral Company

Kimberley Agriculture and Pastoral Company Pty Limited (KAPCO) is an example of a management company. KAPCO started in 2015 with three Aboriginal pastoral properties and two Aboriginal Corporation investors. By 2018, KAPCO managed over 28 000 cattle across four stations and 733 474ha of the Kimberley. KAPCO's vision is to continue to build and diversify the cattle business.

KAPCO has subleases over four Aboriginal pastoral stations:

1. Myroodah
2. Bohemia Downs
3. Mount Anderson
4. Frazier Downs

KAPCO operates under a single management structure and is a 100% Aboriginal-owned business with Aboriginal directors and majority Aboriginal staff.



Workers on Myroodah Station, one of the four KAPCO properties

### History

When KAPCO began, their properties were like many other Aboriginal pastoral properties in the region. They had skilled people on the stations with interest in developing a business but lacked the critical knowledge and resources needed to run a profitable business.

The individual properties were limited by low cattle numbers, insufficient financial security and a lack of infrastructure, vehicles, machinery and equipment.

They decided the best way to move forward was to work cooperatively and form a single pastoral business. The business would represent and manage all pastoral properties and the KAPCO Board was formed with representatives from each of the properties.

There was mutual agreement within the group that KAPCO would:

1. maintain a commercial focus
2. generate employment for Aboriginal people on their own country
3. generate equity, income and other social benefits for the communities.

Working under a single company created multiple benefits for the four KAPCO properties. These included:

- reduced costs
- improved herd management and animal welfare
- capacity to appoint an experienced commercial cattle business manager
- increased employment and training opportunities
- ability to seek expert professional advice in all matters relating to the business.



## KAPCO governance

As KAPCO lacked the funds to cover the operating and development costs of the cattle business, the CEO and board of directors looked for potential investors with similar goals. They found two established Aboriginal businesses who invested in KAPCO in exchange for shares in the company. The Commonwealth Bank and Indigenous Business Australia provided loan capital to purchase stock on the basis that the cattle be used as financial security.

The KAPCO members recognised there would be challenges in managing the diverse and often conflicting interests of the member properties and investors. It was agreed there was a need to develop two separate entities:

1. a land holding entity with two representatives from each of the pastoral stations
2. an investment group entity with two representatives from each of the investors.

The board of directors agreed they would always maintain proper governance practices. These included:

- regular directors meetings with recorded minutes for each meeting
- voting based on membership, not shares
- maintenance of proper corporate governance for all entities within the structure
- all entities registered with ASIC
- annual financial audits.

A simple diagram showing KAPCO's structure and the separate entities can be seen below.

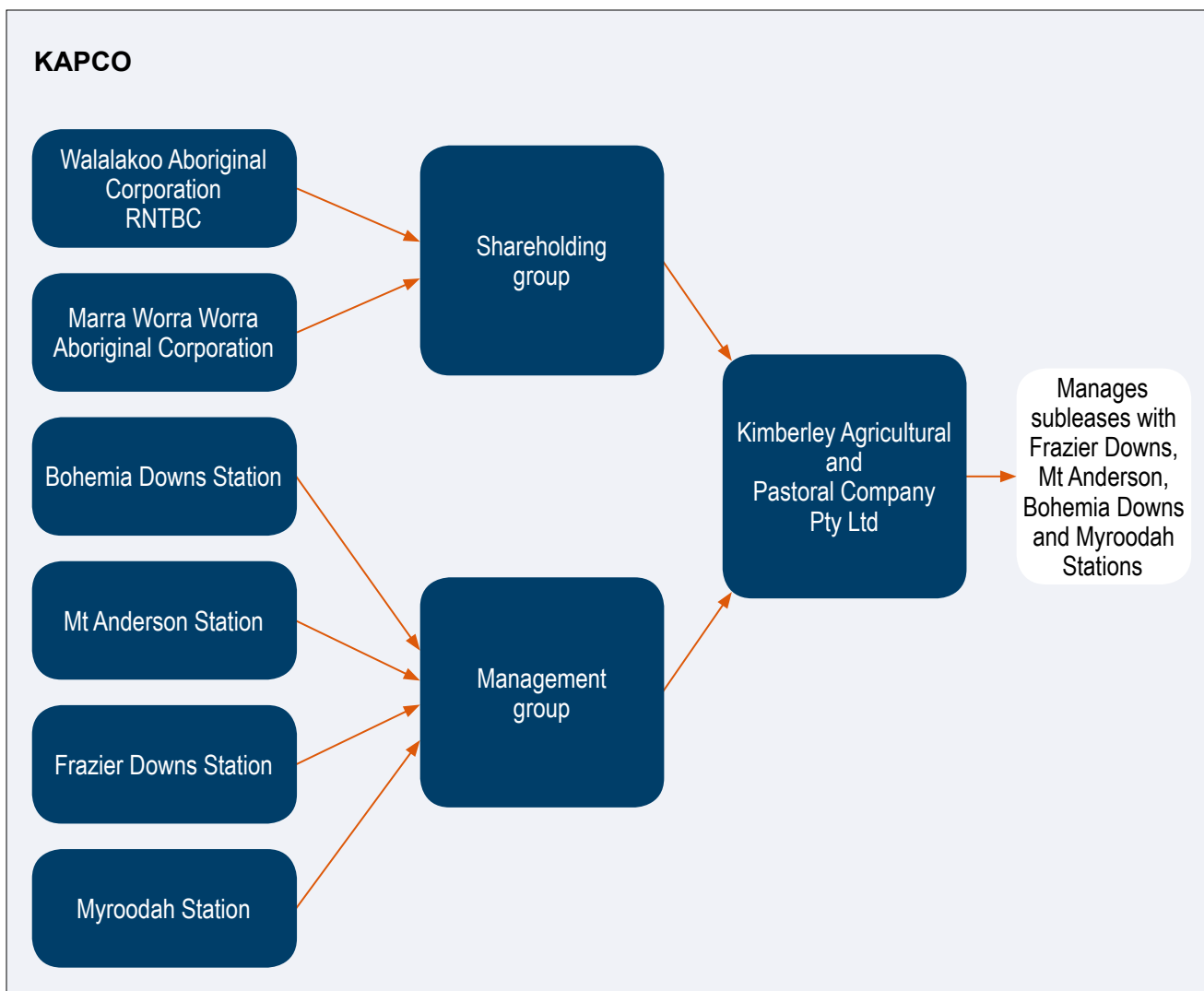


Figure 8: KAPCO business structure

## Shareholders Agreement

A shareholders agreement sets out the rights and responsibilities of each of the JV partners and is legally binding (meaning there are legal consequences if the terms of the agreement are not followed).

**Q.** Who are the parties to a Shareholders Agreement?

**A.** Each of the shareholders (JV partners) – a shareholder can be an individual or an organisation.

Terms that may be included in an Incorporated JV Shareholders Agreement will be similar to those in an unincorporated JV agreement, but will also include terms about running the company such as:

- business must operate in accordance with shareholders agreement & constitution
- shareholders assets & shares
- loans
- budgets and business plans
- financial statements
- board meetings
- directors duties
- dividends
- sale and issue of shares
- insurance
- deadlocks and mediation
- majority Aboriginal ownership of JV company
- majority Aboriginal directors, including chairperson
- intellectual property

**Table 14: Things that can be included in an incorporated JV agreement**

**If you are thinking about entering an incorporated JV arrangement you should get professional legal advice and have your lawyer prepare the shareholders agreement for you.**

## Legal requirements of an incorporated JV

Separate legal entity?	Governing law?	Governing docs?	Board of directors?	Approvals?
Yes	<i>Corporations Act 2001 (Cth)</i>	Shareholders agreement; constitution	Yes - made up of representatives from each Shareholder and possibly external experts - directors must comply with directors duties in Corporations Act	Depending on the circumstances - the Pastoral Lands Board and, or, the Minister for Lands

**Table 15: Legal requirements of an incorporated JV**

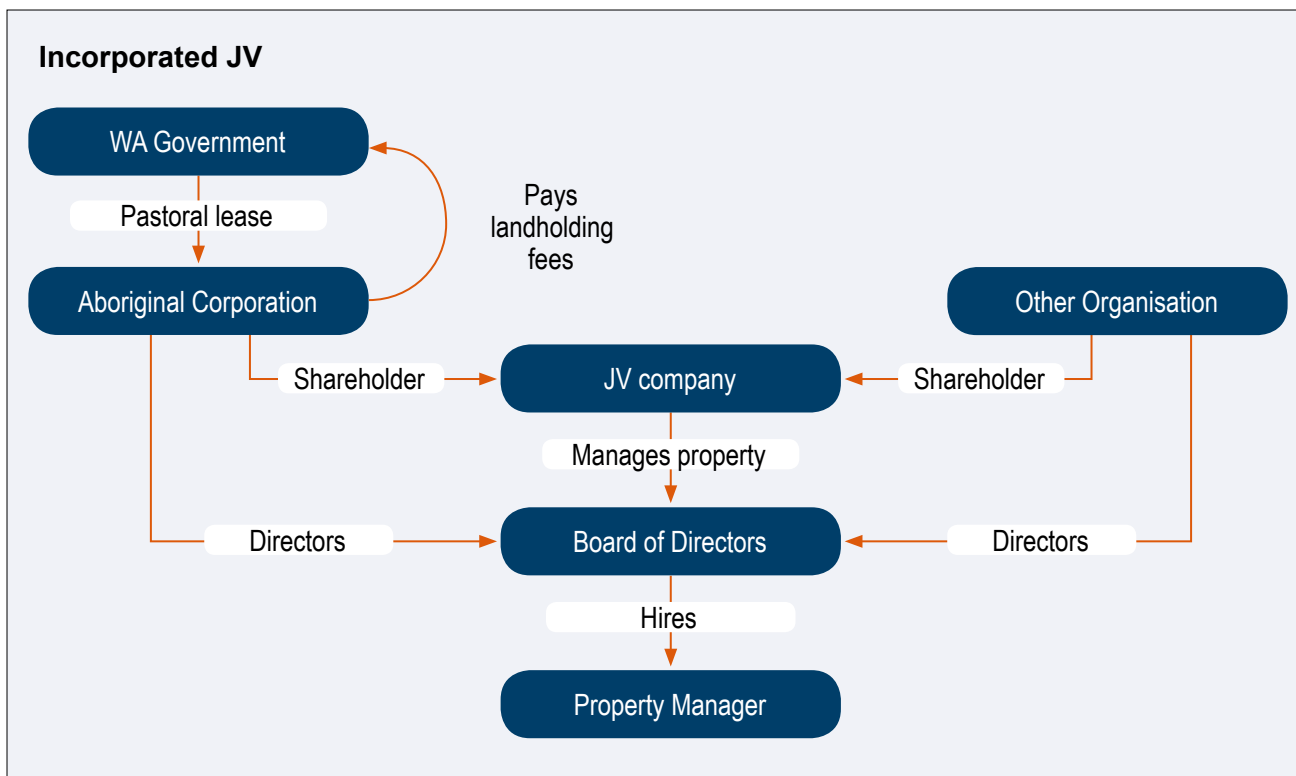


Figure 9: A basic example of an incorporated JV structure





 <b>Strengths</b>	 <b>Weaknesses</b>	 <b>Opportunities</b>	 <b>Threats</b>
<ul style="list-style-type: none"> <li>• strongest legal model</li> <li>• Corporation keeps control of lease</li> <li>• separate legal entity</li> <li>• company governed by Corporations law and shareholders agreement</li> <li>• can be registered or certified with Supply Nation</li> <li>• directors must comply with director duties</li> <li>• shareholders don't pay debts of jv company</li> <li>• JV company income can be distributed to shareholders as dividends</li> <li>• shares resources and responsibilities</li> <li>• economic return for Corporation</li> </ul>	<ul style="list-style-type: none"> <li>• legal costs to set up company and prepare shareholders agreement</li> <li>• less flexibility than unincorporated JV</li> <li>• legal compliance generally more complex and costly e.g. ASIC compliance</li> <li>• ongoing costs for running JV company can be high e.g. company tax rate and audit costs</li> <li>• complex structure</li> <li>• differences in operating structures of individual Corporations</li> <li>• Corporation must be represented on board to have a say</li> <li>• Corporation must actively monitor JV company compliance</li> </ul>	<ul style="list-style-type: none"> <li>• directly involved in running business on country</li> <li>• sharing of costs of improvements to infrastructure, equipment &amp; wages</li> <li>• employment, mentoring &amp; training of local Aboriginal people and Corporation</li> <li>• skills &amp; experience transfer</li> <li>• build permanent infrastructure</li> <li>• improve animal welfare and herd management</li> <li>• improve Corporation governance</li> <li>• industry exposure</li> <li>• compliance with pastoral lease, laws &amp; regulations</li> </ul>	<ul style="list-style-type: none"> <li>• shareholders wish to exit or wind up JV company</li> <li>• Corporation does not support board structure or decisions made</li> <li>• wrong choice of businesses to partner with</li> <li>• JV company does not comply with shareholders agreement, laws &amp; regulations</li> <li>• no knowledge transfer from JV partners &amp; directors to Corporation</li> <li>• Aboriginal Corporation has limited or no role in running of business but JV company uses business to get funding reserved for Aboriginal businesses</li> <li>• financial and legal costs involved in dealing with disputes</li> </ul>

Table 16: Strength, Weaknesses, Opportunities and Threats (SWOT) analysis of incorporated bodies

## Incorporated JV

### East Kimberley Cattle (EKC)

East Kimberley Cattle Pty Ltd (EKC) is an Aboriginal owned and managed cattle enterprise.

EKC operations run across three Aboriginal pastoral stations:

1. Glen Hill
2. Violet Valley
3. Doon Doon

The EKC business model is 100% Aboriginal-owned where the property owners and shareholders of EKC are also the operators of the business.

EKC's business model allows the three properties to share resources and skills and sell cattle from their shared herd as an EKC product.

EKC's development was supported by the department's Aboriginal Economic Development (AED) program in 2010. This process involved comprehensive feasibility studies and governance and business management planning.

EKC has a strong development focus based on five core strategies:

1. building the herd structure and genetic quality
2. developing property infrastructure
3. expanding business opportunities
4. diversifying the business
5. maximising community benefits.

EKC has faced continuous challenges to get the infrastructure developed, herds stabilised and ensure all parties are equally committed to the company. EKC is now beginning a new period of expansion. This is a result of a consistent focus on building their operational, management and leadership capabilities and experience as the operators of the business.





## EKC governance

EKC has a board of directors which meets every three months. Comprehensive minutes are recorded from each of these meetings. Additional directors' meetings are held when needed to deal with issues as they come up.

Directors often invite the station leading hand and mustering crew to attend the directors' meetings as observers. This enables staff to develop a deeper understanding of the business and the strategy behind decisions made as well as strengthening the businesses succession planning.

EKC meets all ASIC requirements by maintaining a register of officers, updating company details regularly, ensuring there is a company secretary and preparing annual audited financial accounts.

EKCs model is successful due to their focus on:

- good governance practices
- capacity building through technical skills training and supporting young talent
- business management support and partnerships
- protection of land and cultural values
- building benefits for Aboriginal people and communities.

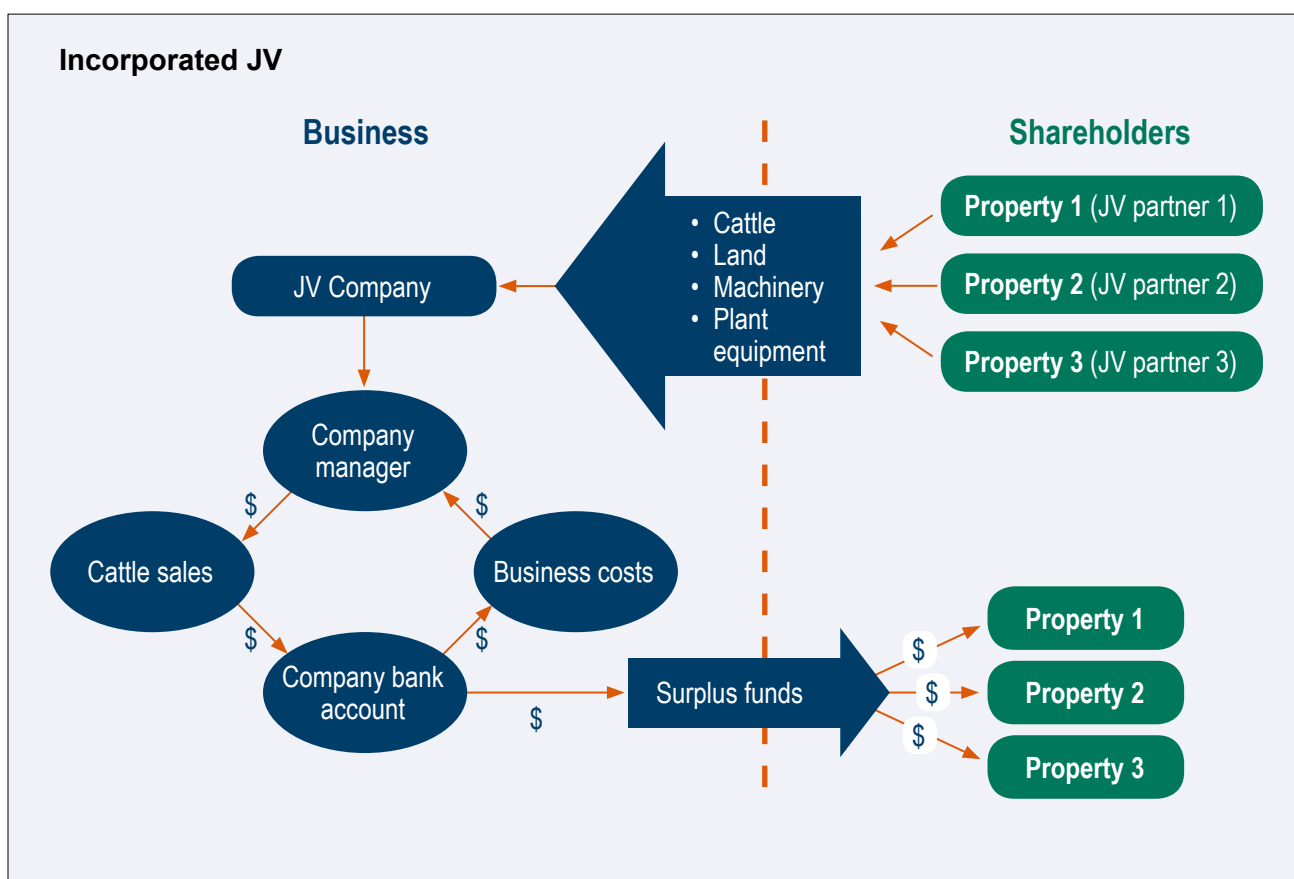


Figure 10: Diagram of how an incorporated JV could be set up for a pastoral company

## Where to next?

### 1. Know your current situation

- Do you have a business accountant and lawyer that you can speak to for advice?
- What is your business structure? Are you a Company, Aboriginal Corporation, Trust, Partnership or Company Limited by Guarantee?
- How is your business structure regulated? By ASIC, ORIC, ACNC or by contract only?
- Who are your stakeholders? Are they Shareholders, Members, Partners or Beneficiaries?
- Who controls and manages the business? Is there a board of directors, management committee, partners or trustees? Is there a business or strategic plan and budget for the business?
- Who runs the day-to-day operations of the business? Do you have a managing director, CEO and general manager? Do the directors, shareholders, members and, or partners also run the business?
- What assets does your business hold? Have you done a property evaluation, rangeland assessment and infrastructure assessment? Know the value of your property!
- Do you keep proper financial and governance records? Do you have an accounting system or bookkeeper? Who can sign to release money from your bank account? Are your finances audited each year? Do you keep minutes of all meetings? Do you keep records of your directors, shareholders and, or members? Are all your records up-to-date? Make sure you are not trading while insolvent!

**Your accountant, lawyer and the department's AED program should be able to help you find out this information.**

### 2. Get assistance

If you are thinking about entering a new business arrangement or just want to talk to someone about how your business is going, then you should contact the Department of Primary Industries and Regional Development's Aboriginal Economic Development (AED) program.

The AED program provides business support, training and capacity building to Aboriginal-led enterprises across WA in multiple industries, particularly the pastoral industry. The AED program will be able to help you at all stages of your business.

If you are thinking of entering into a business arrangement with another person or organisation, the AED program will be able to help you carry out an open expression of interest (EOI) process.

**Make sure you always seek legal advice from your lawyer and not someone else's to ensure they have your best interests in mind. The department's AED program can help you out with this as well.**

### Good to know!



An Expression of Interest (EOI) reduces risk that your business could be taken advantage of. Without completing an open and transparent process to set up your pastoral business model, you could face multiple risks such as a conflict of interest or your property being undervalued. An open and transparent process is the best way to see what business opportunities are out there and which is the best in ensuring your business has the greatest chance of success!

## Service providers

There are multiple organisations who will be able to assist you with running your business! What each of these organisations can help you with and how to contact them is outlined below:



### **Australian Charities and Not-for-profit Commission (ACNC)**

Charity registration for not-for-profit organisations like a Company Limited by Guarantee. The ACNC website has many resources explaining what a charity is, how to apply, and ongoing compliance requirements.

Website: [acnc.gov.au](http://acnc.gov.au)



### **Aboriginal Economic Development (AED)**

The Aboriginal Economic Development (AED) program within the Department of Primary Industries and Regional Development builds local capacity and supports new business and jobs for Aboriginal people through primary industries and strategic regional projects.

AED provides a client-focussed agricultural enterprise support service, engaged only on the invitation of Aboriginal landholders across the state. The service supports Aboriginal agricultural businesses in completing work that allows them to be better placed for commercial industry investment, such as the implementation of business management plans.

Through AEDs comprehensive corporate governance process, training and support, and the involvement of other government and non-government organisations, many Aboriginal enterprises now have the capacity to manage their business sustainably.

Website: [agric.wa.gov.au/aboriginal-business-development-0](http://agric.wa.gov.au/aboriginal-business-development-0)



### **Australian Securities and Investments Commission (ASIC)**

Company (Pty Ltd), Company Limited by Guarantee and business name registration. The ASIC website has many resources concerning how to comply with the Corporations Act and ASIC requirements, as well as company governance obligations.

Website: [asic.gov.au](http://asic.gov.au)



### **Business.gov.au**

Information for businesses to help them succeed. The business.gov.au website is a resource hub with a large collection of information and links to material across all areas of businesses. Find an up to date list of all grants and funding programs available to your business here.

Website: [business.gov.au](http://business.gov.au)



## Department of Planning, Lands and Heritage (DPLH)

The Department of Planning, Lands and Heritage is responsible for:

- The Aboriginal Lands Trust
- Management of Aboriginal Heritage sites
- The Pastoral Lands Board

Website: [dplh.wa.gov.au](http://dplh.wa.gov.au)



## Department of Primary Industries and Regional Development (DPIRD)

The Department of Primary Industries and Regional Development (DPIRD) provides services to WAs primary industries and regions. There are multiple programs within DPIRD that can provide assistance to pastoral businesses. These include:

- Northern Beef Development
- Rangeland Monitoring
- Animal Welfare
- Field Veterinary Officers
- Livestock Biosecurity

DPIRD works closely with the nine WA Regional Development Commissions who may also be able to assist your business.

Website: [dpiird.wa.gov.au](http://dpiird.wa.gov.au)



## Department of Prime Minister and Cabinet

The Department of Prime Minister and Cabinet (PMC) has multiple programs regarding Indigenous affairs including economic development and employment. They have multiple grant opportunities under the Indigenous Advancement Strategy (IAS).

Website: [pmc.gov.au](http://pmc.gov.au)



## Indigenous Business Australia (IBA)

Indigenous Business Australia (IBA) provides loans and business support to Aboriginal businesses around Australia. IBA provides a mix of products, services, advice, networks and capability to help you start or grow your business.

Website: [iba.gov.au](http://iba.gov.au)



## Indigenous Land and Sea Corporation (ILSC)

The Indigenous Land and Sea Corporation (ILSC) assists Aboriginal and Torres Strait Islander people to realise economic, social, cultural and environmental benefits that the ownership and management of land, water and water related rights can bring. The ILSC provides this assistance through the acquisition and management of rights and interests in land, salt water and fresh water country. The ILSC offers funding for small projects up to \$100 000 and large projects of more than \$100 000.

Website: [ilc.gov.au/](http://ilc.gov.au/)



## Landgate

The Western Australian Land Information Authority operates under the business name of Landgate. It is the statutory authority responsible for property and land information in Western Australia.

Website: [landgate.wa.gov.au](http://landgate.wa.gov.au)





## Many Rivers

Many Rivers Microfinance Limited (Many Rivers) is a not-for-profit organisation that supports aspiring business owners with microenterprise development support and access to finance in order to see the potential of people and communities realised.

Website: [manyrivers.org.au](http://manyrivers.org.au)



## Morrgul

Morrgul is a Broome-based organisation offering business development and ongoing business support to Aboriginal people. Morrgul services are provided at no cost to community members with the ability and motivation to start their own business. Morrgul can help you start a business or improve your existing business.

Website: [morrgul.com.au](http://morrgul.com.au)



## Office of the Registrar of Indigenous Corporations (ORIC)

Registration and oversight of Aboriginal Corporations. The ORIC website has many resources to assist Aboriginal & Torres Strait Islander businesses comply with the CATSI Act and ORIC requirements, as well as corporate governance obligations.

Website: [oric.gov.au/](http://oric.gov.au/)



## Rangelands NRM

Rangelands NRM is a natural resource management organisation that oversees WA's rangelands areas. They support the development of small community groups and Indigenous Rangers providing for a long-term investment in the environment by those that live, manage and work this land.

Website: [rangelandswa.com.au](http://rangelandswa.com.au)



## Supply Nation

Register your business on Supply Nation's "Indigenous Business Direct", a national directory of Aboriginal and Torres Strait Islander businesses. Supply Nation brings businesses together with the procurement teams of Government agencies and Australia's leading organisations to help them engage, create relationships and do more business.

Website: [supplynation.org.au](http://supplynation.org.au)



## Glossary

**Aboriginal Corporation** is a for-profit or not-for-profit Aboriginal-run Corporation established under the CATSI Act, registered with ORIC and governed by a Rule Book. The name of the Corporation is generally followed by the words “Aboriginal Corporation”;

**Aboriginal Reserve** refers to Crown reserve land that is set aside by the Government for the purpose of Aboriginal use and benefit;

**ACNC** means the Australian Charities and Not-for-profit Commission which administers the Charities Act 2003 (Cth) and other legislation, and registers and regulates Australian charities;

**AED** program means the Aboriginal Economic Development program for the support of Aboriginal businesses, within the Department of Primary Industries and Regional Development;

**Agistee** means the person or organisation who uses part or all of the land from a pastoral leaseholder to temporarily graze their livestock, generally under an agistment agreement;

**ALT** means the Aboriginal Lands Trust, Western Australia. The ALT is a statutory board commenced under the Aboriginal Affairs Planning and Authority Act 1972. The ALT is responsible for administering the ALT estate which includes 249 crown reserves, 7 general purpose leases and 6 pastoral leases;

**ASIC** means the Australian Securities and Investments Commission which regulates Australian business entities, including a Company and Company Limited by Guarantee;

**ATO** means the Australian Taxation Office, the Federal Government’s principal revenue collection agency;

**CATSI Act** means the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) which establishes ORIC and sets out the Federal laws dealing with registration of Aboriginal and Torres Strait Islander groups as Aboriginal Corporations;

**Corporations Act** means the Corporations Act 2001 (Cth) which sets out the Federal laws dealing with certain Australian business entities, including a Company (Pty Ltd) and Company Limited by Guarantee;

**Charity** means a not-for-profit organisation or Company Limited by Guarantee whose primary objectives are philanthropy and social well-being. Charities are governed by the Charities Act 2003 (Cth) and are registered and regulated by the ACNC;

**Company (Pty Ltd)** is a for-profit private company established under the Corporations Act, registered with ASIC and governed by a Constitution. The name of the company is generally followed by the word “Pty Ltd” or “Proprietary Limited”;

**Company Limited by Guarantee** is a public not-for-profit company established under the Corporations Act, registered with ASIC and governed by a Constitution. The name of the company is generally followed by the word “Limited”. A Company Limited by Guarantee can also be a Charity;

**Constitution** means a document setting out the rules governing the relationship between, and the activities of, a Company and its Shareholders or a Company Limited by Guarantee and its Members;

**Joint Venture (or JV)** is a commercial arrangement between two or more people or organisations to work together for a specific project or in an ongoing partnership for a mutual benefit. A Joint Venture (or JV) can be unincorporated (a relationship governed by a Joint Venture Agreement, not legislation) or incorporated (a relationship governed through a separate Company or Company Limited by Guarantee set up for the purpose of the JV);

**Landholder** - see Pastoral Leaseholder;

**Lands Administration Act** means the Lands Administration Act 1997 (WA) which sets out the laws dealing with WA pastoral leases;

**Leaseholder** - see Pastoral Leaseholder;

**Members** means the owners of an Aboriginal Corporation or Company Limited by Guarantee. They don't own an interest (or share) in the organisation like a Shareholder does, but act as guarantors for the organisation;

**Minister for Lands** means the WA Minister for Lands, who is responsible for the WA Government's Department of Planning, Lands and Heritage and for the management of crown land in WA;

**ORIC** means the Office of the Registrar of Indigenous Corporations, which supports and regulates Aboriginal Corporations;

**Partnership** is an arrangement between two or more people or organisations where the partners jointly manage the business to make a profit. Governed by the Partnership Act 1895 (WA), the partnership can trade under the names of the partners or register a new business name with ASIC;

**Pastoral Lands Board (PLB)** is a statutory authority established under the Land Administration Act 1997 (WA) and is jointly responsible for administering pastoral leases in WA with the Minister for Lands;

**Pastoral Lease** is a lease over crown land in Western Australia which gives the leaseholder the right to graze authorised livestock, as well as certain supplementary uses and ancillary activities, on the land - also known as a 'head lease'. The pastoral lease is registered with Landgate;

**Pastoral Leaseholder** (or **Leaseholder**) means an organisation or person that leases land for pastoral uses from the WA Government;

**Rule Book** means a document setting out the rules governing the relationship between, and the activities of, an Aboriginal Corporation and its Members;

**Shareholders** means the owners of shares in a Company;

**Shareholders Agreement** means an agreement between the Shareholders of a Company that sets out their rights and responsibilities to each other;

**Sole Trader** is one person running their own business or enterprise, generally under their own name or a business name registered with ASIC. There is no legislation governing sole trader businesses, but they must report their income to the ATO;

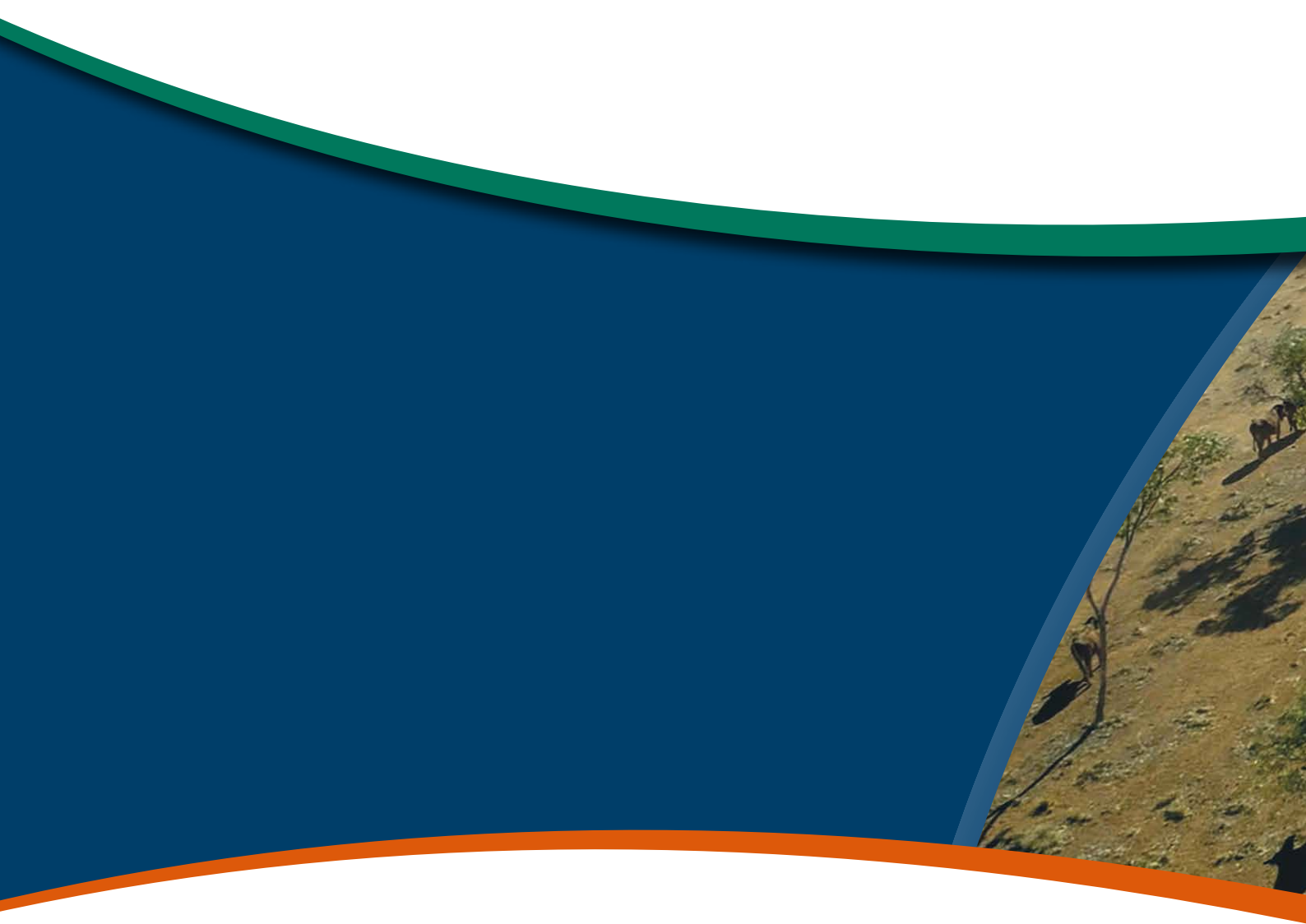
**Sublease** is where a pastoral leaseholder forms a written agreement with someone else (the sublessee) for use of part or all of the land under the pastoral lease for pastoral purposes - the leaseholder rents the land to the sublessee. The headlease remains with the pastoral leaseholder meaning they are still responsible for the management of the land and the lease requirements;

**Sublease agreement** is a written agreement between the pastoral leaseholder and the sublessee describing the terms and conditions they have both agreed to in relation to a sublease;

**Sublessee** means the person or organisation subleasing (or renting) part or all of land from a pastoral leaseholder, under a sublease agreement - put simply the sublessee is a tenant and the leaseholder is a landlord;

**Trust** is a legal entity that is created to allow a second party the rights to manage the assets or property on behalf of the party (beneficiary);

**Trust Deed** is a legal document that sets out the rules for establishing and operating a Trust.



**Important disclaimer**

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