

ABORIGINAL AREAS PROTECTION AUTHORITY

SUBMISSION TO THE REVIEW OF THE PASTORAL LAND ACT - KEY ISSUES PAPER

Aboriginal sacred sites - Background

All Aboriginal sacred sites in the Northern Territory, regardless of whether they are registered, are protected under the *Northern Territory Aboriginal Sacred Sites Act 1989* (the *Sacred Sites Act*).

The Territory's sacred sites legislation aims to build enhanced relations between Aboriginal and other citizens with regard to effective land use within a regime of sacred sites protection, for the social, cultural and economic benefit of all Territorians.

The primary function of the Aboriginal Areas Protection Authority (the Authority) is the protection of sacred sites. Formal registrations of sacred sites, and the issuing of Authority Certificates to protect Aboriginal sacred sites in the vicinity of development and land use proposals are the key components of the Territory's Aboriginal sacred sites protection regime. Authority Certificates protect Aboriginal sacred sites whilst also providing certainty to the land user or developer,

However, the Authority also has records of (unregistered) sacred sites, and provides information on sacred sites to the public, including in relation to residential land and both small-scale and large-scale development projects.

The Authority's records are updated in conjunction with site registrations and the issuing of Authority Certificates to land users and developers, and many recordings of sites will not create constraints for development purposes.

The broad public acceptance of the *Sacred Sites Act* demonstrates the success of the Aboriginal Areas Protection Authority in protecting sacred sites whilst also supporting development and use of land. The Authority's comments on the Key Issues Paper are provided within this context of support for development and use of land.

Relationship between the *Sacred Sites Act* and the *Pastoral Land Act 1992*

Under the *Sacred Sites Act*, pastoralists and other users of pastoral land have appropriate means to identify sacred sites on pastoral leases, and to undertake works and development whilst also protecting those sites from unlawful trespass, works and desecration.

While the capacity remains for pastoralists and others to use the *Sacred Sites Act* in the course of operating a pastoral lease, any relevant approvals under the *Pastoral Land Act* (PLA) must take responsibility for ensuring that any actions subsequent to that approval are also within other legislative controls which apply to that land, including the *Sacred Sites Act*.

It is acknowledged that s39 of the *PLA* generally refers, amongst other things, to the conservation and protection of features of cultural and heritage significance. However, the legislation should be strengthened to specifically refer to Aboriginal sacred sites and the *Sacred Sites Act*. The *PLA* should include requirements for obtaining "site clearances" through Authority Certificates, particularly for those matters which will require approval through a mechanism (Pastoral Land Board or otherwise) established by that Act.

Comments

Issue 1 – NON-PASTORAL USE OF PASTORAL LAND AND DIVERSIFICATION

Non-pastoral use and diversification of pastoral land is considered to have a greater potential for unlawful entry onto, works on and desecration of Aboriginal sacred sites than most current pastoral uses. Approval processes for any non-pastoral use of pastoral land and diversification have a responsibility to ensure that in accordance with the provisions of the *Sacred Sites Act*, sacred sites are protected in any subsequent non-pastoral use and diversification.

It is recommended that the *PLA* require that an Authority ("site clearance") Certificate for effected areas be obtained, and its conditions taken into account, before any non-pastoral use or diversification can be approved.

Issue 4 – MAJOR DEVELOPMENT WORKS ON PASTORAL LEASES

Major development works on pastoral leases do have a significant potential for unlawful entry onto, works on and desecration of Aboriginal sacred sites. Approval processes for any major development works have a responsibility to ensure that in accordance with the provisions of the *Sacred Sites Act*, sacred sites are protected in any subsequent works.

It is recommended that the *PLA* require that an Authority ("site clearance") Certificate be obtained, and its conditions taken into account, before any major development works can be approved.

ISSUE 5 – CLEARING ON PASTORAL LAND

Clearing on pastoral land is generally considered to have a very high potential for unlawful entry onto, works on and desecration of Aboriginal sacred sites. Approval processes for any clearing have a responsibility to ensure that in accordance with the provisions of the *Sacred Sites Act*, sacred sites are protected.

Pastoralists are currently strongly encouraged to apply for an Authority Certificate, to provide "site clearances" and avoidance conditions for sacred sites, when considering land clearing operations.

It is noted that the current Guidelines for Clearing on Pastoral Land (revised April 2004) refer to a requirement for applicants to provide "Details of any declared Aboriginal sacred sites." This is a positive reminder for applicants to consider sacred sites avoidance issues.

However it should be noted that under the *Sacred Sites Act*, Aboriginal sacred sites are *registered*, not declared, and all sacred sites, regardless of their registration status, are protected. The Authority has records of both registered and recorded sites, as well as of Authority Certificates which may have been issued for works on or near sacred sites. On application, the Authority may issue an Authority Certificate to applicants providing conditions (if any) under which the proposed (clearing) works may be undertaken.

Despite the Guidelines for Clearing requiring applicants to provide details of sacred sites, there are inconsistencies in the process by which these details might be currently considered by the Pastoral Land Board (PLB).

Under the Guidelines, when assessing applications for clearing, the PLB is required to consider a range of matters in relation to other relevant legislation, including heritage and archaeological sites; and public environment reports and environmental impact statements. However, there is no requirement for the PLB to consider reports or Authority Certificates regarding Aboriginal sacred sites issued by the Authority. The approving Board should take into account the conditions with regard to sacred sites avoidance as part of determining approval for land clearance operations.

It is recommended that the *PLA* require that an Authority ("site clearance") Certificate for effected areas be obtained, and its conditions taken into account, before any pastoral land clearing can be approved.

This comment also refers to Issue 9 – Establishment of the Pastoral Land Board – Powers and Functions, Composition, Qualifications for Membership.

ISSUE 8 – MINIMUM REQUIREMENTS FOR A GRANT OF A PASTORAL LEASE & PROVISIONS RELATING TO SUBDIVISION

Subdivision proposals on pastoral leases do have a significant potential for unlawful entry onto, works on and desecration of Aboriginal sacred sites. Approval processes for any subdivision proposal have a responsibility to ensure that in accordance with the provisions of the *Sacred Sites Act*, sacred sites are protected in any subsequent works.

It is recommended that the *PLA* require that an Authority ("site clearance") Certificate be obtained for subdivisions where disturbance of land and/or natural features will be caused, and its conditions taken into account, before any subdivision of pastoral land can be approved.

ISSUE 9 - ESTABLISHMENT OF THE PASTORAL LAND BOARD – POWERS AND FUNCTIONS, COMPOSITION, QUALIFICATIONS FOR MEMBERSHIP

The Authority considers that sacred sites protection, in conjunction with land development and use, is of relevance to both the development related (clearing, major development and subdivision) and land monitoring and management roles on pastoral land. Thus Aboriginal sacred sites matters must be considered by the PLB, and if established, a specific pastoral land development approval mechanism.

The Authority would support PLB membership based on expertise. If the *PLA* becomes inclusive of requirements for Authority Certificates, there would be no need for Board expertise in the specific field of Aboriginal sacred sites. However, given the other significant Indigenous interests in pastoral land and its management, the Authority would support Indigenous representation on the PLB.

Note the recommendation provided under Issue 5 also has relevance to the powers and functions of the PLB.

ISSUE 15 – ABORIGINAL ACCESS TO PASTORAL LAND/INDIGENOUS RIGHTS AND INTERESTS

A key Indigenous right and interest in pastoral land is the protection of Aboriginal sacred sites.

The protection of sacred sites in the context of the *PLA* should be achieved through two mechanisms.

Firstly, while noting the general reference to “the conservation and protection of features of cultural and heritage significance” in s39, the *PLA* needs to be strengthened to specifically require holders of pastoral leases to act to protect Aboriginal sacred sites, in accordance with the *Sacred Sites Act*.

Secondly, where the *PLA* provides for an approval of additional works, development, subdivisions and the like, there must be a specific requirement for the applicant to obtain an Authority Certificate, and that the Certificate’s conditions be taken into account before any approval is given.