

COMMENTS ON REVIEW OF NT PASTORAL LANDS ACT

This submission deals with issues in the same order and under the same heading numbers as they are presented within the NT Government Discussion Paper of July 2004.

Whenever pastoral legislation is opened up for review in any state there are a number of predictable representations made by parties seeking increased rights across or control over pastoral lands. In most cases the rights being sought have never been held and could only be held at considerable expense or risk to the pastoral landholder. Many of my comments deal with these predictable representations from a pastoral industry perspective.

Issue 5.1 Non pastoral use of Pastoral Land and diversification

The present definition of pastoral purposes is adequate. It allows for open range grazing; capital development for more intensified grazing systems such as cell grazing; it permits the production of hay or other agricultural stock feeds as well as small scale tourism associated with the pastoral activities. The question of feedlots is not specifically addressed and probably should be. While they should require planning approval (including an Environmental Impact Assessment), they also should be permitted within a pastoral lease. Investors and their financiers seeking more intensive developments for feedlots, tourism facilities etc may require the added security of freehold. There should be a mechanism, based on “highest use” principles, with full compensation to the lessee and native title holders (if applicable) to convert such parcels of a pastoral lease to freehold and to provide for appropriate access to such sites.

Issue 5.2 Access to pastoral land

Most people seeking greater and free access across pastoral leases fail to recognise the risks and costs to the lessee. Few are prepared to pay the significant cost needed to overcome them. The modern pastoral enterprise must increasingly be characterised as high value, capital intensive, labour efficient, profitable and sustainable. Interest groups seeking to paint a picture other than this to enhance their own position are using outdated views or being mischievous.

Biosecurity is a major risk area not identified in the discussion paper. Camp refuse presents a disease risk (both exotic and local) and also a risk of heavy metal residues. If for example, a cow swallowed a discarded nickel-cadmium battery or licked the cracked casing of an abandoned lead acid battery then a residue scandal could place Australia’s 14 billion dollar red meat industry on hold. Despite the carry-in carry-out assurances of 4WD groups and recreational fisherman (most of whom do the right thing), rubbish either becomes an eyesore or its management becomes a constant chore to the landholder at popular camping spots. The more that landholders progress down the road of certified Quality Assurance and EMS programs, the more they are required to limit and manage such risks.

There are many known cases, and some have been well reported, of vehicles introducing and spreading weeds and soil fungal diseases. These risks are substantially greater where vehicles from outside the region are involved. Many farmers and graziers across Australia now require all vehicles planning to drive off sealed roads on their properties to have a full quarantine wash-down.

Hybridized goldfish have been confirmed in the Cooper Creek system. At one station manager's request, Queensland Police apprehended a group of fishermen using live European carp as bait. The illegal introduction of carp to other major Australian inland river systems would be a substantial environmental disaster. The unquantified environmental cost of this introduced pest would very likely exceed even the most optimistically presented tourism or recreational benefit. The Northern Territory has many rivers subject to such risk. The further widening of this risk, through increased recreational fishing access, needs careful consideration.

Substantial problems arise once a station track becomes a significant public access route. Visitors, largely through carelessness, regularly leave gates open. Vehicle damage to gates is also common. It invariably becomes necessary to replace gates with grids and to regularly clean out those grids. Frequent traffic near stock water points amounts to disturbance leading to stock stress or avoidance and a direct cost to the producer. Motor bikes and dogs are added problems. Significant road realignment away from stock waters is usually required. Increased road use requires increased road maintenance and road upgrades.

Public liability risk is greatly increased with visitors travelling upon station tracks not designed or maintained with the novice driver in mind. Station vehicles which might formerly have operated off road in an unregistered state (eg mustering motor bikes), are required to be registered and operated by appropriately licensed staff once visitors are allowed access beyond the gazetted public roads.

The Public Access Route mechanism in South Australia is often paraded as a workable mechanism for providing public access to sites of interest within pastoral leases. The gazettal of a PAR does place the public liability risk with the Crown, but only to the extent that the landholder cannot be shown to have been negligent in acknowledging or addressing matters of visitor safety. No funds are routinely allocated for PAR maintenance in South Australia and there is always a battle between Government agencies and landholders over responsibility, need and timeliness of PAR maintenance. Is it a sufficiently used road to require the Transport Department to maintain it? If it is an alternative access to a National Park shouldn't the NPWS bear the cost? If the landholder grades the road in frustration over its disrepair, what proportion of what cost can be recovered, and from whom?

In northern Australia, public access compounds the risk and frequency of bushfire. The catalytic converters on modern petrol vehicles are known to start fires. Aboriginal people routinely light fires or burn cars along their frequently travelled routes. Camp fires present high bush fire risks. Fire frequency and intensity are already too high across much of the un-managed land in the NT with emerging ecological impacts. Pastoralists provide an important fire management labour resource over lands under active pastoral lease.

Around 54% of the Northern Territory is held in tenures other than pastoral lease. Public access is substantially restricted on Aboriginal land. Visitors are intensively managed and charged accordingly within Parks and Reserves. The rising recreational access demand from the public, particularly for bush camping, should not entirely be borne by the 46% of the NT under pastoral lease.

Issue 5.3 Remedial provisions

The NT Government maintains a field monitoring program over pastoral lands. This is adequate in documenting the maintenance or enhancement of productivity and in supporting the elimination of obviously unsustainable land management practices. Many people in the wider community are interested in biodiversity and would like to see its full preservation upon pastoral lands, as well as within parks and reserves. Biodiversity is however, almost impossible to measure and even surrogate measures of good landscape health are difficult to identify. The measures of landscape health within the present pastoral monitoring program provide quite good surrogate measures of biodiversity. Satellite derived cover (% bare ground) and fire coverage and frequency, supported by periodic but systematic field estimates of yield (standing dry matter), frequency of palatable perennial grasses, density of trees and shrubs and presence of weed species are good and probably adequate surrogate measures of biodiversity. They are also tried, proven and affordable.

Some interest groups are seeking to have principles of Ecologically Sustainable Development (ESD) and endangered species lists enshrined within pastoral legislation. This is an attempt to increase the range of issues which might trigger remedial action (eg. a mandatory recovery program for a threatened species irrespective of whether or not grazing was a threatening process) or require the closure of the industry. Endangered species legislation has been mischievously used and manipulated in the USA, through third party law suits, against both recreational access and resource industries, including grazing. The protection of biodiversity is necessary and worthwhile, but fairness and common sense still need to apply to the balance between wilderness protection, wise use and property rights.

A number of documents, including commonwealth strategies, have identified differing ESD principles. The five principles set out in Section 3A of the *Commonwealth Environmental Protection and Biodiversity Conservation Act* are probably the best, along with the mechanisms for identifying activities which might trigger the application of that Act. Irrespective of any wording within the NT *Pastoral Lands Act*, the EPBC Act still applies and there seems little point duplicating its application. Furthermore, specific commitment to ESD principles within the *Pastoral Lands Act* may subsequently require reporting against. This may require complex additional monitoring over such lengthy time scales as to be unachievable within normal political and funding parameters. Anti-grazing interests always argue for a barrage of unspecified monitoring in some hope of identifying an issue where pastoralism is unsustainable. Government must balance this against what is reasonable, measurable, effective and affordable.

Issue 5.4 Major Development Works

See earlier comments under Issue 5.1 in relation to irrigation developments and feedlots.

Issue 5.5 Native Vegetation Clearing

The Discussion Paper treats vegetation clearance only from the perspective of removing trees. The other states, and particularly South Australia, have also regulated fire and grazing as vegetation clearance mechanisms which require clearance permits. Even grazing upon a pastoral lease is classed as clearance under the *SA Native Vegetation Act* and that grazing is then granted an exemption only if it occurs in the same manner and at the same rate as it has over the last ten years (ten year rule). In South Australia the Native Vegetation Council has carriage of the permit system and delegates its responsibility to the Pastoral Board for clearance on pastoral leases. Because the establishment of a new water point effectively introduces grazing to a new area, the ten year rule applies and a permit to “clear” vegetation is required to stock the new water point. The pattern of events now occurring in SA is for a whole property “wildlife” (note the extension to fauna as well as vegetation) plan to be prepared before any permit will be issued for vegetation clearance (grazing). Such plans impose criteria on where new waters can and cannot be established. Such conditions have not been established through research but via “professional judgement” within the agency. There is no compensation mechanism for land which is “planned” or regulated into a permanently water remote state and hence becoming a *de facto* conservation estate. Given that the grant of pastoral lease is intended to allow the lessee to develop and work the land to its best advantage as a pastoral property, the situation in SA is untenable. This has been achieved not through the Act itself, but through amendments to regulations under the Act.

In Western Australia the Environmental Protection Authority has carriage of vegetation clearance applications. In WA there has been a more sensible recognition of the right to graze granted under pastoral lease. While grazing is still classed as a clearance mechanism to prevent gross overgrazing, the general development and grazing of a pastoral lease is exempt from the clearance definition.

Any re-wording of the PLA in the NT should specifically clarify that grazing in accordance with the conditions of a pastoral lease, including the reticulation or development of stock waters, does not constitute vegetation clearance. If, and only if this is done, could clearing controls for pastoral leases be dealt with under the *Planning Act*. Penalties could apply for the illegal clearing of trees and for the illegal lighting of fires (burning not conducted under a specific permit or established code of practice).

Issue 5.7 Minister’s Consent to Transfer

An incoming lessee may have to meet foreign ownership criteria and should be of “good character”. Persons previously prosecuted for cattle stealing, drug cultivation,

animal welfare abuses, major industrial relations breaches and undischarged bankrupts are not fit and proper to hold pastoral leases. The question of maximum ownership is probably best left to ministerial discretion with appropriate guidelines laid down to deal with the differences between individuals and public companies.

Land condition should be an issue for consideration in the sale and transfer process for pastoral leases. In Western Australia all pastoral leases being offered for sale are subject to a pre-sale inspection and the intending purchasers must sight a copy of the inspection report. Poor land condition or particular management issues to be addressed are therefore brought to the attention of the purchaser who then factors them into the price. This is a better mechanism than requiring the intending purchaser to prepare a management plan to address any land condition issues. It is the seller who ought to be penalised for poor land condition, not the purchaser. Forcing an intending purchaser to prepare a management plan would also unreasonably delay the sale process. The PLB role in a sale would therefore be to undertake pre-sale inspections in situations where there was not a reasonably current (last 3 years) property inspection report.

Issue 5.8 Minimum Requirements and Subdivision

An intending purchaser should not be required to demonstrate financial capability to “develop” the lease. A battler may be low on financial resources but be prepared to make personal sacrifices, work hard and build many of the necessary improvements himself over time. Other purchasers may fall into the lifestyle or semi-retirement category and not desire or need a lot of infrastructure to support their needs. Most Governments are now moving away from such development covenants.

A similar argument to the above applies to the “commercial viability” of a lease. A much larger enterprise is required to support a family structure of retired parents living on the property with the manager/operator also having children at boarding school. A corporate owner with corporate overheads (including payroll tax) and all workers being paid a full wage will also require a larger and more productive unit to be commercially viable. A couple seeking an enterprise capable of only supporting them without too high a workload or management complexity will be seeking a smaller unit. Some people also have off-farm incomes which supplement their rural lifestyle.

Different properties suit different buyers for different reasons and the Government’s responsibility should be to ensure a range of property sizes exist and to ensure duty of care in the husbandry of the land. See earlier comments on the merits of subdivision and freeholding for higher uses. The investment security arising from the perpetual nature of NT leases should not be underestimated and is now a big factor in the continuing development and corporate ownership of NT properties.

Issue 5.9 The Pastoral Land Board

The Pastoral Land Board should remain the responsible body for pastoral land and its current powers and functions are adequate. The Board could grow to 7 members to

accommodate a wider range of skills and views. While the present Board probably includes a good range of skills, a specific requirement to include skills in recreation/tourism, land management/ecology and indigenous affairs would be welcomed by many in the wider community and would be consistent with the approach taken in SA and WA. The members should be appointed by the Minister from short lists (3 names) proposed by relevant representative bodies. A proposed seven member structure might include:

- 1 Independent Chairperson with relevant skills, including corporate governance.
- 1 Departmental (DBIRD) Representative
- 2 Pastoralists
- 1 Indigenous Person
- 1 Recreation/Tourism Representative
- 1 Ecologist/Land Management Specialist

Issue 5.10 Pastoral Land Appeal Tribunal

The fact that the Tribunal has never been constituted or required is not a sign that it will never be necessary, but more one to celebrate in that issues have apparently been resolved through negotiation and common sense. The actions of the Board or Minister should remain subject to appeal, particularly where they can be shown to be outside due process or to have unreasonably imposed risk or financial burden upon an aggrieved party. There is potentially a conflict of interest in having the Minister establish the panel of experts from which the Chief Magistrate may choose the two other members of the tribunal (Section 114). Particularly where it may be a ministerial decision being appealed. The other states would use a Land & Environment or Land & Resources Court as the tribunal where impartiality, proper judicial procedures and rules of evidence automatically prevail. There may be an equivalent alternative in the NT.

Third parties should, and do, have their rights and interests in pastoral land protected through legislation, regulations and processes administered by the PLB. To avoid frivolous and vexatious claims third parties should not have rights of appeal and enforcement. There is often an attempt to convey the impression of pastoral lease as public land over which the general public hold a broad range of rights and the lessee merely has rights to the forage. In law, the lessee holds full proprietary rights to the leased land (as for freehold), except for those specific reservations to the crown and public. These reservations include access (under certain conditions), rights for the Crown to permit the extraction of minerals, timber, stone/sand etc, and for fully compensated resumption or easements for reasons of higher use or national good.

Issue 5.11 Regulations

Regulations should be added or amended only if absolutely necessary due to changes in the Act itself. The general public have become very cautious about the use of regulations. Changes to regulations tend to be poorly notified to the wider community, receive little public debate and can become a preferred mechanism for Government to implement change. Changes to regulations can only be accepted or

rejected by the upper house, not changed. They have therefore often been presented as a raft during late night sittings. For example in South Australia, grazing was classified as vegetation clearance through regulation, not through the legislation itself.

Issue 5.12 Access to Aboriginal Land

Indigenous access to Indigenous held land should not be unreasonably restricted but nor should any choice of an access route be automatic. Access should be negotiated as part of the Living Area/ Excision process, or as part of an ILUA, and should be confined to agreed or gazetted access routes. Such routes may be chosen to avoid dust and disturbances at water points or homesteads. Formal arrangements for road, gate and grid maintenance need to be in place. The uncontrolled use of fire by Aboriginal people presents the biggest risk to pastoralists. Mechanisms for community responsibility, community education and insurance may need to be put in place.

Issue 5.13 Aboriginal Community Living Areas

Since the advent of the *Native Title Act* it seems sensible to tie community living areas to the ILUA process. Such ILUAs and any living areas would then require claimants to establish their *bone fides* either to the landholder or through the Federal Court, rather than be bound by the present eligibility criteria.

Professional pastoralists running disease free herds under QA and possibly EMS programs are unlikely to want or permit semi-feral killer herds being run on community living areas within their properties. The relative positioning of the living areas will be an issue here and killer herds should be subject to negotiation under an ILUA rather than being an automatic right for every living area. Part 8 of *the Pastoral Lands Act* may need some revision in the above regard.

Issue 5.14 Technical Corrections

No particular comments on the stated corrections.

The NT limits sub-leases to five year terms with a single renewal for a further five years. This is somewhat limiting for Aboriginal lessees seeking to sub-lease grazing land to independent operators. In many cases the leases potentially available for sub-lease have run down infrastructure and the lessee themselves, or an incoming sub-lessee face considerable cost in repair and upgrade. The payback time on such improvements is often around ten years and so a further term is required to gain from such arrangements. It might be sensible to offer an initial ten year term, renewable in five year terms or even ten year terms. This may attract more beneficial commercial arrangements between Indigenous land owners and cattle producers.

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