# LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

# ECONOMIC POLICY SCRUTINY COMMITTEE

## Public Hearing Transcript

10.30 am, Friday, 2 February 2018

Litchfield Room, Parliament House, Darwin

**Members:**

Mr Tony Sievers MLA (Chair), Member for Brennan
Mr Jeff Collins MLA (Deputy Chair), Member for Fong Lim
Ms Selena Uibo MLA, Member for Arnhem
Mr Gary Higgins MLA, Member for Daly
Mr Gerry Wood MLA, Member for Nelson

**Witnesses:**

- Mrs Helen Armstrong, Gilnockie Station
  Mr John Armstrong, Gilnockie Station
- Mr Paul Burke, Chief Executive Officer, Northern Territory Cattlemen's Association
  Mr Tom Ryan, Executive Officer, Northern Territory Cattlemen's Association
- Mr Troy Setter, Chief Executive Officer, Consolidated Pastoral Company
- Mr Geoff Crowhurst, President, Katherine Mining Services Association
- Ms Teresa Cummings, Corporate Manager, North Australia Rural Management Consultants
  Mr John Jansen, Director, North Australia Rural Management Consultants
- Mr Frank Peacocke, Director, Herron Todd White (Northern Territory) Pty Ltd
- Mr Joe Morrison, Chief Executive Officer, Northern Land Council
  Mr Michael O'Donnell, Principal Legal Officer, Northern Land Council
- Mr Mitch Hart, Northern Territory Manager - Outback to Oceans, The Pew Charitable Trusts
  Mr Pepe Clarke, Deputy Director (Terrestrial), The Pew Charitable Trusts
- Ms Shar Molloy, Coordinator, The Environment Centre NT
- Mr Jimmy Cocking, Chief Executive Officer, Arid Lands Environment Centre
  Mr Alex Read, Policy Officer, Arid Lands Environment Centre
- Ms Joanne Townsend, Chief Executive Officer, Department of Environment and Natural Resources
  Ms Tania Moloney, Director, Pastoral Lease Administration & Board, Department of Environment and Natural Resources
  Mr Luis Da Rocha, A/Executive Director, Rangelands Division, Department of Environment and Natural Resources

**Mr CHAIR:** Welcome everyone and thanks for coming in today. There are a few formalities we need to go through first.

I would like to introduce the Economic Police Scrutiny Committee. I will start with my Deputy Chair and move from there.

**Mr COLLINS:** Good morning everyone. Jeff Collins, Member for Fong Lim.

**Ms UIBO:** Good morning and thanks for coming to the hearings. I am Selena Uibo, Member for Arnhem.

**Mr HIGGINS:** Thank you all. I am Gary Higgins, Member for Daly.

**Mr WOOD:** Good morning. Gerry Wood, Member for Nelson.

**Mr CHAIR:** Thank you everyone. I am Tony Sievers, Member for Brennan and Chair of the committee.

We have some formalities to go through. On behalf of the committee we welcome everyone to this public hearing in to the Pastoral Land Legislation Amendment Bill 2017.

**Gilnockie Station and Sturt Plateau Best Practice Group**

**Mr CHAIR:** I welcome to the table to give evidence, the representatives from Gilnockie Station and Sturt Plateau Best Practice Group: Helen Armstrong, John Armstrong and Rohan Sullivan via telephone. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public, you may ask the committee to go in to a closed session to take your evidence in private.

For the record, could you please introduce yourself and each state your name and the capacity in which you are appearing to the committee today.

**Mr ARMSTRONG:** My name is John Armstrong and I am a director of the company which owns Gilnockie Station. I probably should say I operate it, the bank probably owns it.

**Ms ARMSTRONG:** I am Helen Armstrong and I am here to help John in case he has any problems hearing anything you say, because he is seriously hearing impaired.

**Mr CHAIR:** Would you like to make an opening statement, John, to the committee?

**Mr ARMSTRONG:** Yes, I certainly can. I think if you keep trying Rohan he will probably come on line very shortly for sure. I guess you have all had a chance to read the submission and the amended submission that I put in as well. In there I also made a claim about the Valuer–General over valuing. I actually made a note to go with that yesterday which I can give to you as well, which probably explains it a little better. I will read that later, I guess. Really no need to read it right now.

There is no doubt that we have quite often had, we believe—I do not think I need to say really very much except answer questions—but there is no doubt that the Valuer–General has given us a hard time in the past. May I give you just one example of how the Valuer–General has, we believe, over stepped his mark in the past? It involves a neighbour of ours, during the reclamation of land for the railway line—how they did a valuation on a strip of land. The valuer came for that purpose and they were looking at a facility which was a large water tank, a bore and a pump and the bore was 50–60 metres deep yielding good water in itself an asset of probably $60 000 to $70 000 without the pump.

The Valuer-General has had—up to that time—a strange habit of devaluing the value of our improvements. That day, he remarked that that facility was worth nothing because it was 20 to 30 years old or even older. The owner of the land said, 'Fair dinkum, that is worth nothing. Are you sure about that?' and he got him to reiterate it was indeed worth nothing. 'Right' says the owner of the land, 'What I would like to do, we have to

develop another 1 000 sq. km of land in this side over here and I will need ten more of those facilities. I wish you to put in place ten of those facilities for me for nothing,' and all of sudden the facility had value.

That is a clear demonstration of how we feel about how the Valuer-General has often worked and we believe that our UCV values have been inflated since the time we worked out that we had to put supplement on our lower grade country to improve the carrying capacity over and above what that country that we rent off the Crown in its natural state will productively carry. That is about it.

If I have a take-home message of any sort, it is very simply this: that we believe this discussion is only about the registration; the legal registration; onto our lease of a permit which has come about because of the change in the extension to the 30 years and allows us time to get security for money at the bank to develop those things. But we believe it is only about the registration of that permit, which of course, those registrations cost a few hundred dollars, for which I am very happy to pay. Nothing else.

**Mr CHAIR:** All right. Thanks John, thanks Helen. John, we will go back to your submission and we had a few questions that we have put together on the submission just to get some clarity and more information from you on that submission. I will just start and the panel may jump in at any time and ask some questions. We are limited to about 20 minutes because we have a lot of sessions today, so we will try to get it and keep it short and sharp.

John, the bill proposes to move the basis of rents from market value to carrying capacity. What are the problems you see with the current market-based methodology?

**Mr ARMSTRONG:** For UCV? I will read you something. Unimproved country requiring supplements of protein and nutrients—which is what we have—will cost large amounts of capital to purchase those nutrients to be fed to the cattle in optimising a carrying capacity to a minimum necessary to acquit a minimum expenditure of other capital improvements to work the land to a minimum level of viability.

If I have the boundary fence and put borders up for cattle, I will spend X amount of dollars, and if I can only stock it to the unimproved carrying capacity of say three head per square km, I would never service that debt. I have to then go out and buy more supplement to supplement the pasture to carry more cattle. That is problem.

We believe that expenditure should be viewed as invisible improvements, as per the valuations and can be deducted from the improved capital value with simple comparative arithmetic. As I say, that has only really happened—that disparity has really only happened since this act came into being, which is about the same time we realised we had to buy more protein and nutrients to carry more cattle to make our other investments viable. The Valuer-General has never recognised that. We have been labelled from time to time as 'hobby farmers' and all sorts of things.

**Mr CHAIR:** All right. We will move on. John?

**Ms ARMSTRONG:** Can I just make a comment? Mr Chair?

**Mr CHAIR:** Yes, yes of course you can.

**Ms ARMSTRONG:** The reason for that is of course, is because of our very poor nutrients at the end of the dry season. The cattle actually go into a starvation mode and we have to feed them those nutrients or run them at such a low level, that we would not be viable.

**Mr ARMSTRONG:** I think the underlying thing is, regardless of whether it is a fixed improvement such as the one I have spoken about a minute ago or this invisible improvement, by not transferring the improvements at 100% of their sale value, which is what it is supposed to be on, the Valuer-General is, by definition, transferring the amounts he has deducted to the Crown. That goes down very badly with us. The value of that tank—which would have cost $100 000 to put in place with the bore, trough and everything—is worth nothing and, therefore, he has transferred that value of that facility across to the Crown.

**Mr COLLINS:** Moving rents to the unimproved carrying capacity would take those sorts of things out of those calculations …

**Mr CHAIR:** Your microphone is not on.

**Mr COLLINS:** Oh, sorry. Moving rents to being based on the unimproved carrying capacity would alleviate those problems, would it not? Are there advantages in that?

**Mrs ARMSTRONG:** Moving the rents to unimproved carrying capacity—would that alleviate those problems?

**Mr ARMSTRONG:** It certainly would alleviate the problem we have in the expenditure we have to do. All people can spend more money to increase production, but if you go to places like the Barkly or the VRD where the unimproved carrying capacity of the land is, say, five or six head to the square kilometre, and other costs are less as well – or Alice Springs where there are only two head to the square kilometre and other costs are a lot less – they can be more viable with that number of cattle. We cannot be viable with three head where we are, we have to have seven head and that gap of paying, out of our pocket, for those four head is not recompensed or recognised in any way.

**Mrs ARMSTRONG:** If I may make a comment, Mr Deputy Chair that would certainly be acceptable as long as the necessary input of supplementation was taken notice of as well. Please do not assume that because we carry extra the square kilometre with supplement, we could do that without.

**Mr WOOD:** I know Gary is on the same thing, but my understanding of unimproved capital value is it does not take into account any improvements, it is just a rate on the land. So, some of those concerns you have should not be an issue. If you put in an extra bore, tank or fencing unimproved capital value assessment will simply be on the land. It does not matter whether you have three cows or 10 cows.

In the formula for assessing the unimproved capital value – and Gary might talk about this too - most councils, for instance, set a percentage of their unimproved capital value to work out their total rates for the year. If that percentage was adjusted, would there be any real problems with retaining the unimproved capital value? Obviously, someone does evaluations, but the government has the power to manipulate the percentage of the unimproved capital value it wishes to charge. Would that not be a lot simpler than trying to work out how many cows you have on the property, which I do not think has much to do with the rent.

It seems to me we have gone down a complicated path, but now you are addressing that. If that percentage of the unimproved capital value was variable each year according to valuation, but the government still has its final amount of rent, would you still be happy with that?

**Mrs ARMSTRONG:** Would you be happy continuing in the present circumstance which, I have to say, we have appealed every year but have not had the funds to go to court to argue it, so we have stepped back from it. So, the current situation is not a very good one for us because the Valuer-General uses this depreciation of …

**Mr ARMSTRONG:** It used to be.

**Mrs ARMSTRONG:** … assets in determining the unimproved value, which he deducts from sale. Also because the Valuer-General does not recognise the use of supplement in the carrying capacity, and thus that also affects the unimproved value – when he deducts all the add-ons to come at the unimproved value.

**Mr ARMSTRONG:** A couple of things there, Mr Chair. The problem of inequity of rental could easily be addressed by referring directly to the unimproved carrying capacity of the land. In other words, if we can carry three unimproved, then we will pay $1 for every one of those beasts, so to speak. That would give you instant, direct variability between higher production country and lower production country, rather than using the UCV.

The problem with UCV, and being inflated, for the reasons we have explained, is that should we be forced into having to freehold, we are paying an inflated price, or the council rentals—which I appreciate is outside this discussion—are established at a higher rate than they necessarily need be, because they are not related to the real property UCV.

Certainly, the standard UCV calculation, prior to 1993, was the same it would be in a city street. You simply have the sale value, you deduct the value at sale of the improvements, and there is your UCV. Or what it might attract at the price of the stated fee simple.[1]

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In addition to correcting transcription errors, Mr Armstrong provided the footnoted clarifying comments on the transcript::

[1] definition;- the capital sum which the fee simple of the land might be expected to realise if offered for sale

And in our case, we had proof of that at auction. We took one of our unimproved blocks to auction and did not get a bid. So without improvements it is worth nothing. Had we put water and fencing improvements or without supplementation, the only bid it would attract would be to be able to service three head per square kilometre. Of course, any buyer would then have to spend a lot of money per annum—I spend $28 per head per annum—to make it a viable enterprise.

And the sale price would reflect that, but it does not necessarily follow that the UCV should be inflated above that of, say, VRD. A parcel of land in the VRD the same size might attract the same sale price, but clearly my land is inferior to VRD land.

**Mr HIGGINS:** When you talk about the unimproved capital value, forgetting all the other stuff they have spoken about, my understanding is the Valuer-General should take into account distance to markets. So when you go to an estimated carrying capacity, it would avoid that.

Which means if you have a property with an unimproved carrying capacity of two or three per square kilometre, you would have the same value applied whether you were 10 kilometres from the market, or 100 kilometres from the market. So you would be paying the same.

**Mr ARMSTRONG**: That is correct.

**Mr HIGGINS:** Do you see that impacting on it? Your unimproved capital value, while I admit you have identified some problems, your carrying capacity will create other problems, or I am asking that question. Will it create those other problems?

The other point people need to be aware of is that for as far as I can remember, government, the Minister, has always determined the amount of revenue they will make from pastoral leases. I do not know the exact number of years, but for a long time, that has been $5m.

Irrespective of the value of the land, the percentages are then manipulated to bring in that $5m. Do you have any comments about that? I am not saying it is the right way to do it, I am just asking for comments.

**Mr ARMSTRONG**: I will start with the last one first. That is exactly right, and I do not think anyone has any problems with that. If the government needs $5m or $10m or $1m, and that can be addressed in a rational manner, with accountable equality, then it is not a problem.

What we are saying is that we are paying, because the Valuer-General has not calculated properly our unimproved carrying capacity, that he is giving us an inflated unimproved carrying capacity, we are paying a disproportionately high price. We should actually be paying, probably, per square kilometre, the same as they pay in Alice Springs. But we are not, we are paying twice or three times that.

In fact, when they do their calculation Mr Chair, they deduce the bare value of the land, having subtracted the value of all the other fixed improvements, and they must assume the land is watered. So we cannot have any bias there at all. Then they take the unimproved capital carrying capacity — which has recently been based on science, much better than it was in the past, and I think is very good and is still about the same number as we had in the past — they divide that deduced value by the unimproved carrying capacity.[2]

In our case it is three, but we have to carry seven. So your beast area value, according to them, is going to be, in our case, much higher than the beast area value on, say, VRD. We cannot understand how they cannot understand how you could denote a beast area value of three times the value of that on VRD, which might have seven head per square kilometre for sale where we have 7 cattle at sale but they have five or six unimproved. We have only three, therefore we have twice the BOV. They simply will not address that and that is the main problem. It cannot possibly be that you have a different best area value because that is what the market said it is and that is what it pays. This is where we have to start and finish with that whole discussion.

**Mr SIEVERS:** Yes, we have to wrap it up, John and Helen.

**Ms ARMSTRONG:** Just very quickly in response to Mr Higgins's question on the distance from market inequality, I hope that in the years to come our markets might be all around Australia. Where our market might be in the future, if we can develop the north and get some improved pasture, our market might be in Brisbane,

[2] to establish a valuation beast area value different from the market beast area value

the meatworks in Darwin or somewhere else. You could not make a formula that would cover all those eventualities. I am happy to wear that extra cost.

**Mr ARMSTRONG:** And to his credit, the Valuer–General is licensed to be able to make those adjustments. If you live at Ramingining, for example, with a pastoral lease or Suplejack, or Gilnockie you might have impediments of all sorts of different things. He is allowed, under his licence, to juggle some of those UCVs to accommodate those issues; we have no problem with that.

**Mr CHAIR:** Thank you, John and Helen for your time and submission, we really appreciate it.

**Mrs ARMSTRONG:** Thank you very much for the opportunity.

## NT Cattlemen's Association

**Mr CHAIR:** On the behalf of the committee I welcome everyone to the public hearing into the Pastoral Land Legislation Amendment Bill 2017. I welcome to the table to give evidence to the committee representatives from the Northern Territory Cattlemen's Association and Consolidated Pastoral Company, Mr Paul Burke who is the Chief Executive Officer; Mr Tom Ryan, Executive Officer; Mr Troy Setter, Chief Executive Officer.

**Mr BURKE:** Thomas Stockwell is an apology today.

**Mr CHAIR:** Thank you all for coming before the committee today. We appreciate you taking the time to speak to the Committee and look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly website. A transcript will be made for use of the committee and may be put on the committee's website.

If at any time during the hearing you are concerned that what you will say should not be made public you may ask the committee to go into a closed session and take your evidence in private. For the record, could you please each state your name and the capacity in which you are appearing?

**Mr BURKE:** Paul Burke, Chief Executive Officer of the Northern Territory Cattlemen's Association.

**Mr RYAN:** Tom Ryan, Executive Officer Northern Territory Cattlemen's Association here to support our submission to the Act.

**Mr SETTER:** Troy Setter, Chief Executive Officer of the Consolidated Pastoral Company, or CPC.

**Mr CHAIR:** Great. We thank you for you submissions and as the committee we have read through them a lot and discussed the submissions and come up with a number of questions. We want to know if you want to make an opening statement before we start with those questions.

**Mr BURKE:** We would both like to make opening statements. On behalf of our members, we want to thank the committee for allowing the NTCA to speak to the bill for an act to amend the *Pastoral Land Act* and Land Regulations. The NTCA is the peak primary industry advocacy body in the Northern Territory representing 90% of the Territory's pastoral industry which includes small family owned enterprises, Indigenous enterprises and large corporate entities. The NTCA members are custodians of over 700 000 square kilometres of the Northern Territory land mass and manage a herd of 2.1 million head of cattle.

The NTCA is a grassroots organisation that unashamedly was founded to advance and protect the interest of cattle producers in the Northern Territory. A charter that has served the cattle industry well and has increased prosperity for all Territorians. The NTCA has consulted widely on the proposed reforms to the *Pastoral Land Act* over a long period of time, almost two years. It has unified support from its membership and its key stakeholders.

The pastoral sector is a significant employer in the rural and remote Northern Territory. NTCA assists members in this regard through its Real Jobs Program, which is operated in partnership with the Indigenous Land Corporation since 2008. Its goal is to increase Indigenous participation in the Territory's pastoral industry with real jobs for the youth, ongoing mentorship to enhance career development and leadership skills. We rely on our members to help make the Real Jobs Program the success it has been. We have consistently

advocated that if we can get the policy settings right, the pastoral industry will continue to grow and create jobs for all and remote Territorians.

Today, we seek to give clarity in relation to the *Pastoral Land Act Amendment Bill* and some common misrepresentations that have circulated during the consultation process. We will also outline why the NTCA, its members and key stakeholders see this as an important legislative reform.

Whilst many of the amendments are administrative in nature we wish to focus on a few. The first key amendment we wish to discuss today is estimated carrying capacity. The principle reason industry supports these changes in unimproved carrying capacity or estimated carrying capacity of the pastoral land in its unimproved state is critical to these amendments being successful in administration and being supported by the NTCA.

Proposed new section 54(4) of the PLA purporting to add matters the agency must consider in determining carrying capacity, instead amend the definition of estimated carrying capacity in section 3 of the PLA to be, 'estimated carrying capacity is the number of animal equivalents that an area of pastoral land can sustainably support in its unimproved state'.

The pastoral industry has long advocated for a fairer and more consistent approach to calculating pastoral rents. The key driver for this was for the pastoral enterprise to be able to budget from year to year with confidence that rental payments would not significantly alter.

The carrying capacities referred to by industry are the agreed carrying capacities completed in 2015 by Herron Todd White on behalf of the Northern Territory Valuer–General. The consultation in relation to amending the rental calculation methodology has been through a rigorous process with presentations, information sessions at NTCA branch meetings in Alice Springs, Tennant Creek, Katherine and the Top End on numerous occasions receiving overwhelming support.

The requirement to review the carrying capacities periodically is unnecessary as carrying capacities as defined in our submission would not change over time. The NTCA and its membership acknowledge the department may require ability for reviews being available to them at periods in time, provided the methodology and definitions remain consistent, this could be considered. The current legislative amendments to modernise and simplify the rent calculation process are welcomed with refinements presented in the NTCA submission.

Secondly, ability to sublease. Successive Territory governments have had ambitions to diversify land use on the pastoral estate. The NTCA has always strongly supported this agenda to diversify activities make sound, economic sense. The ability to sublease parcels of pastoral lands makes attracting investment in to these projects far more achievable and will drive investment.

Non–pastoral use permits have been allowed for pastoral enterprise to diversify since 1992. These sublease arrangements are currently operating in an informal manner. With these proposed amendments it will formalise this process in a transparent manner. It will also allow for formal arrangements to be registered to title. This was previously a major barrier for investments in projects. The NPUs were refined in 2014 to require native title holders to be notified when an application is submitted. If anything, engagement with native title holders has been strengthened by recent amendments, and the current bill being considered will add yet another layer of transparency.

To have the ability to enter into a formal arrangement through a sublease will make the prospect of diversification much more attractive to new proponents, joint venturers and partners. This will drive economic and job prospects for all regional and remote people. The benefits of these changes will impact all Territorians with better employment prospects and subsidiary business flow-on effects.

Indigenous people stand to gain significantly from the diversification of pastoral estate. The social and economic flow-on effects for Indigenous Territorians are obvious. The simple facts are that native title rights are protected in this process by federal native title law. A future act is an act done after January 1994 that may affect native title rights and interest. A future act can be a proposed activity or development on land or water that may affect native title by extinguishing it or creating interests that are inconsistent with the existence enjoyment of native title.

The Northern Territory is leading the way in native title determinations. To date, the clear majority of these have been determined by consent and to complicate the Pastoral Land Amendment Bill with native title law is misplaced.

To date, currently 17 non-pastoral use permits are in place in the Northern Territory. These have been operating without disturbance to traditional owners and in all cases have provided economic and employment outcomes for Indigenous people – for example, Neutral Junction Station which currently has an NPU, has been a strong supporter of the Real Jobs program and has employed up to two Indigenous staff to assist with work that is required. These employees have participated in the NTCA Real Jobs program. This could be replicated across much of the pastoral estate, providing badly-needed job opportunities, if the LPA bill amendments go through …

**Mr CHAIR:** Excuse me, Paul, because of time limits, I do not know whether you would like to table that document?

**Mr BURKE:** Yes, happy to table that document.

**Mr CHAIR:** Are there any other key points of that document you would like to put forward and really press?

**Mr BURKE:** Yes, two points. The NTCA cannot support the proposed penalties identified in section 30B. The consequence of non-compliance with this section is $100 000 and possible forfeiture of title. This is deemed grossly excessive and the NTCA would counter a figure of $10 000 be more appropriate.

**Consolidated Pastoral Company**

**Mr SETTER:** Thank you for the opportunity to present to you today. The CPC is the largest private beef producer in Australia. The enterprise value reported in this week's media is well over $1m. CPC owns and operates a portfolio of 16 stations with the carrying capacity of over 400 000 head.

In the Territory, we are proud to hold 10 pastoral leases and are responsible for sustainable land management of 3.1 million hectares of land. In the Territory we run over 250 000 head of cattle. Our company is a significant contributor to the Northern Territory economy and community and we are a significant employer in regional Northern Territory. We have significant plans to grow our business in the Northern Territory to create more jobs by developing the land we currently own.

Diversification of land use: CPC supports reform of regulations that currently limit the ability of pastoralists to maximise the economic return from their landholdings. CPC strongly supports the diversification of pastoral land used for an effective means of building and strengthening the northern economy.

A fundamental plank in our strategy to grow our company is building a cropping capacity alongside our existing beef operations. We currently operate several export facilities on our properties and we would like to expand these facilities as new markets develop and the productivity and the size of the Northern Territory herd grows. It is not just for our cattle, it is for cattle for other producers we export – prearrange for export.

CPC management has been working with several agronomists to identify cropping opportunities and the company has plans in place to commence the first step of the commercial operations in 2018. The CPC therefore supports the amendments to allow for the grant of a sublease for a pastoral lease for non-pastoral purposes, and for the sublease to be registered on title as security.

Timing for processing of approvals is crucial. Plans and capital take time for approval. The process of diversifying of land use take time and there needs to be an efficient process for the processing of those applications with all parties.

Rent methodology. CPC also supports the reform of the methodology for the calculation of annual pastoral rent, but does not support the proposed estimated carrying capacity as the measure for the value of the property. Estimated carrying capacity can change from time to time, and is often an art to assess. It reflects management decisions and increases government assessment costs.

CPC believe the best measure would be unimproved carrying capacity, or UCC, and we support the amendment to the affect, as proposed by the Northern Territory Cattleman's Association.

Encouraging investment and jobs, and reinvestment in local communities is very important to us, and to the Northern Territory economy and community. UCC is cheaper for government to administer, and more consistent for producers to manage their businesses.

Capital has a choice where it is invested, and there are considerable opportunities and benefits available for all Territorians. That capital has a choice, and it often goes to where there is consistency and predictability. We operate in an environment where seasons, markets and costs are variable. The more consistency we have from government, the greater confidence we can have to continue to invest in our communities.

CPC supports UCC being the consistent methodology for the assessment of land rents. Thank you.

**Mr CHAIR:** Thank you Troy. Thank you Paul. I will open it up to the panel because throughout your statement you answered a lot of my questions.

**MR WOOD:** Good morning. Part of this discussion is about subleasing: using the land for a different purpose. It could be tourism, it could be cropping for another company. How do you see that fitting in with how the government would assess the value of the property?

For a cattle station you have unimproved rates of three cows per square kilometre. Someone subleases a section of the land and grows bananas or something on the property. How do you think the government then should assess the value of the land?

**Mr BURKE:** Currently the methodology we are talking about is unimproved carrying capacity, or estimated amount of cattle in a sustainable manner. That would not change. It is still the same size piece of land.

What we are trying to do is create an economy, a diverse or different skill set on this property. There has been discussion around a permit structure, into which we provided feedback of how those fees may work. That was part of a process late last year.

**MR WOOD:** So you do not see the change in the use of the land as being something that should also be related to whether there is an increase or partial increase in how the land is valued?

**Mr BURKE:** No we do not, because we are trying to encourage investment and diversification. There are significant costs in changing that land use to move to a cropping model or develop a tourism operation, and those significant costs are long term, over 20-plus years, so we need to get the settings that encourage that investment, now.

**MR WOOD:** I am not against that principle. What I am saying is, you are looking at valuing land based on the number of cattle per square kilometre, but if I have a hundred hectares of bananas, a very valuable crop, how does that mix with the idea of valuing a piece of land based on four-legged animals versus horticulture?

**Mr SETTER:** The way I look at that is the consistency. It is a sublease and it has a time period available for that development. Yes it is a significant cost up front, but the benefit would come to the Northern Territory through increased expenditure in the Northern Territory for equipment, labour and taxes and money spent in the local community and shops. That is where the Territory would get that benefit.

The actual cost to the Northern Territory Government to administer that piece of land, whether it runs cattle or bananas, is exactly the same. Cattle being the standard measure for the cost to administer that land for the Northern Territory would stay the same. If you grew a crop that required inspections or a government agronomist to come down, there are already methodologies in place for you to contribute to the community on that.

I do not think we should have a system in place that says the more you develop your land, the more you should pay, because it is a disincentive for businesses and communities to develop their land if you tax at a higher rate every time they try to make the Northern Territory a more viable place to do business.

**Mr WOOD:** I probably understand that. But by using cattle as the means to value the land, it seems to be not—I am just looking at it from a—I suppose—overall perspective—that if you just had UCV, it does not matter what you have. You can have a thousand acres of growing sorghum, some horticulture, some tourism, then you just value the land regardless of whether you have cattle on it. But you are using cattle because your main product?

**Mr SETTER:** Sorry, I am certainly hearing what you are saying. I think one of the opportunities is for review for the future. At the moment we are talking about a very thin part of the land use and we are encouraging and keen as a community in the Northern Territory for further development. If there is opportunity review in the future, it is probably a fairer way of looking at it.

But I think today we are just talking about such small amount of land and we are trying to give people a confidence to develop industry. I think that it is well covered by the Cattle Methodology.

**Mr BURKE:** The other component of that is the tenure would not change, so it is a sublease on your title. Your tenure is changing.

**Mr CHAIR:** I have one other question. Your submissions question, 'Whether ministerial consent for lease transactions, where a member of a body corporate inquires a controlling interest of 15% or more, may be too low to constitute a lease transaction'. What is your thinking around that? What do you consider to be a more appropriate threshold?

**Mr BURKE:** A controlling interest. So 51%. 15% is far too low. In a family operation, it could be dad retiring and someone else coming through like one of the kids coming through. It is far too low and from a corporate entity—someone trading on the stock exchange—I am not sure how you could regulate that. There are already federal government laws that apply to chair transactions in agriculture. I think that 15% is too low.

**MR WOOD:** Mr Chair just one question that I think is important.

**Mr CHAIR:** Yes.

**Mr WOOD:** You believe that the path to a lands board should be the one that does the valuation not the department?

**Mr BURKE:** In our initial conversations that was the case. We have met with Pastoral Lands Board. They deferred back to the department and we have agreed with that.

**Mr HIGGINS:** Can I just ask one question?

**Mr CHAIR:** Yes certainly.

**Mr HIGGINS:** If you had to make the decision between tidying up unimproved capital value and basing it on that, or using unimproved carrying capacity, which one would you take?

**Mr BURKE:** Unimproved carrying capacity. Just for the simplicity of the methodology. It is assuming—and government always assumes—this is the amount of rent we want. I think it is fair across the entire Territory and interestingly, when we take into account the locality as part of that UCV process—I was talking to a producer yesterday that was selling cattle in Adelaide today. Sold cattle through to Dinmore about three weeks ago or four weeks before Christmas. Cattle are traversing across the entire place, so it does not really matter what location you are in.

**Mr HIGGIN:** Which one is better? Estimated carrying capacity that is not unimproved, or unimproved capital value.

**Mr BURKE:** Unimproved carrying capacity was our preferred option. Estimated carrying capacity with the definition of how many cattle—which I stated before—achieves the same result, but unimproved carrying capacity was our preferred option. There was just no methodology current in any areas. That is not to say the Northern Territory could not lead the way and actually do that.

**Mr HIGGINS:** But you would prefer the estimated carrying capacity over unimproved capital value?

**Mr BURKE:** Correct.

**Mr HIGGINS:** I was just trying to work out which sequence.

**Mr CHAIR:** All right. On behalf of our committee, we thank you for coming in and we thank you for your submissions and giving us the additional information today.

**Katherine Mining Services Association and North Australia Rural Management Consultants**

**Mr CHAIR:** The next one is Katherine Mining Services Association.

Good morning. It is Tony Sievers here, I am the Chair of the Economic Policy Scrutiny Committee. Can you hear us all right?

**Mr CROWHURST:** Yes, thanks.

**Mr CHAIR:** Joining me one the committee are our members, Mr Jeff Collins, Ms Selena Uibo, Mr Gary Higgins and Mr Gerry Wood.

**Mr WOOD:** Good Morning.

**Mr CROWHURST:** Good morning.

**Mr CHAIR:** Alright, I have some legal things to go over so it is all very clear how the committee is run.

We welcome you here on behalf of the committee and welcome you to this public hearing into the Pastoral Land Legislation Amendment Bill 2017. I welcome to the table representatives from Katherine Mining Services Association and North Australia Rural Management Consultants, Geoff Crowhurst, Teresa Cummings and John Jansen. Thank you for coming before the committee; we appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and will be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go into a closed session and take your evidence in private.

For the record, could you each please state you name and the capacity in which you are appearing?

**Mr CROWHURST:** Geoff Crowhurst, Chairman of Katherine Mining Services Association.

**Ms CUMMINGS:** Teresa Cummings, a staff member of NARMCO, North Australia Rural Management Consultants.

**Mr JANSEN:** John Jansen, Director of North Australia Rural Management Consultants.

**Mr CHAIR:** Thank you. Do either of you want to make an opening statement to the committee?

**Mr JANSEN:** Yes please, I will.

**Ms CUMMINGS:** Our concerns about the proposed legislation revolves broadly around the actual rent methodology being proposed and I am happy go into an amount of detail about that. We were also looking at some of this legislation in its entirety and having some concerns about the way in which it is hitting as a barrier for economic development within the whole regime of Developing the North programs, activities and emphasis going on.

We have some concerns about the way in which the *Pastoral Land Act* is being administered and enacted on the ground. It has been and still can continue to be an inhibitor to development and some of the Lock the Gate activity reinforcing that concern. Geoff will talk more about that from an economic and regional development perspective. Those are probably the two main concerns. There may be a few other minor ones but they would be the two things generally.

**Mr CHAIR:** Okay. Are there any other opening statements?

**Mr JANSEN:** We are alright for now, thank you.

**Mr CHAIR:** We have obviously read your submissions; can you detail those concerns and any solutions you have?

**Ms CUMMINGS:** We feel that the ECC methodology is not the most effective way to gain a return on that land. We see the ECC methodology, as we have understood it, has potential to be subjective and therefore potential for it to go into a dispute process about what those rating should be. That, again, is not a smooth process.

**Mr CHAIR:** Yes.

**Ms CUMMINGS:** Typically, ECC has a lower denominator to protect the land system. In reality, it is not difficult to image—sorry, I will clarify that. The general view is that if you are ever getting a consultant in to do land use planning for your pastoral properties or any other land you have, the ECC is typically concerned and taking into account all types of weather—particularly drought conditions—and factoring that in, which is marked. It therefore means it is not necessarily set to take into account the really good seasons that come through …

**Mr CHAIR:** Yes.

**Ms CUMMINGS:** … there tends to be a focus on 'let us protect the land when climatic conditions are at their worst'. Therefore, the ECC is typically a lowest denominator.

**Mr CHAIR:** Right.

**Ms CUMMINGS:** It is therefore not difficult to imagine that the pastoralists would stock over that rate – I am not saying overstock, per se, but stock over the rate. Therefore, they are already getting an economic benefit because the cattle levels they were typically carrying would not be those that are reflected in the ECC.

**Mr CHAIR:** Right. Yes.

**Ms CUMMINGS:** Perhaps in the poor years when they destock, their herd sizes might come down to that ECC, but it is not difficult to imagine that in the majority of times they would carry well above that ECC and in good years carry well above that again.

**Mr CHAIR:** Yes.

**Ms CUMMINGS:** We do not see that system as the most effective way to get a return on the land.

It is a very expensive method to implement. One aspect is you could argue that the current method of UCV is also expensive to administer—and we are not denying that—but if you will change the system, then replacing it with some infrastructure that is equally cumbersome, expensive and subjective is not necessarily a smart way forward.

**Mr CHAIR:** Right.

**Ms CUMMINGS:** And by expensive, it is not difficult to imagine that the actual assessment of the ECC would be contracted out to a private company - the Territory is fairly large; whether that would go out to a couple of different companies. Potentially you have some subjectivity between those assessments straightaway.

In that process, we understood the initial process was for 10 years. That is a long time in which to pay rent at a flat rate. It did not appear to have any real variation in that rate for 10 years. In the department briefing we were assured that they are proposing the option to do that more frequently, but we have not seen that in writing. It appears to have some flexibility in the timing of the assessment, but that sort of things does not really make it a clearer, transparent process.

**Mr CHAIR:** Yes.

**Ms CUMMINGS:** From a pastoralist producer point of view, the ECC does not appear to be seasonally adjusted. So, in theory a pastoralist while stocking to the ECC and paying fair rent based on that rate, then in the event of a bad or drought year and having to destock, they are still paying that rate. So, for that year, in essence, paid more rent than their cattle suggest they should. You could then argue that over a period of 10 years, that ameliorates out. But even so, it is not the most effective way to do this.

The other one is that for new developers coming through who are taking on subleases of pastoral land and developing new sublease, or for someone who buys a pastoral property that is not a walk-in, walk-out and therefore they have to restock the property, they are effectively paying rent up front before they get into full production. We are saying that is a bit of a deterrent. I appreciate that currently occurs with a pastoral lease and you can argue that it occurs in any other business operation. Once you lease the property you start paying rent. I think that is the main limitation we see on the ECC, there are probably others, but the proposal we are suggesting is to use a production rate.

In essence, you pay rent based on the number of cows you sell. I will call that a production rate, some people call it a sales tax. But if we call it a production lease, as you sell your beast, you will pay a set amount back to the government.

We do not have a firm view whether that is a per-kilo rate or per-head, or whether within a per-head you have three scales: a bull gets one, a heifer gets one and a weaner gets another, for example. So there are three scales on a per-head rate.

The reason we like this methodology is that the pastoralists already pay an MLA levy, we understand, on per sale, anyway. So that means the infrastructure to collect the rent is already in place, and presumably to audit it, particularly with MLA tax, is already in place. So very low administrative costs to establish, very low administrative costs to administer.

I mentioned MLA tax, obviously the waybills make it a very transparent process to audit as well. And to manage from the pastoralist's point of view.

**Mr CHAIR:** Just a question on that, so the department is considering amending the definition of carrying capacity to make clear that it will be assessed on the unimproved state of the land? Is that clear in the bill and would that alleviate your concerns regarding the rent methodology?

**Ms CUMMINGS:** It is clear in the bill and no it does not alleviate our concerns. In fact, you probably raised another matter I had omitted to discuss.

When I mentioned the ECC's typically low to protect land systems, and I mentioned that pastoralists, you could imagine would stock over that rate. Anybody that is reinvesting in their land and infrastructure and watering systems is absolutely going to have capacity to carry stock well above that rate. So in actual fact they will be getting a benefit, and the taxpayer or the Crown would be underselling that asset, so to speak.

**Mr CHAIR:** Mr Collins, you have a question?

**Mr COLLINS:** You were critical there of the unimproved valuation. It has been said here before and perhaps you missed it, but the government collects a certain amount of rent, say $5m a year from all of these rents. That unimproved carrying capacity provides a set amount you will understand and know from year to year.

If you were to go to a per-head on sales, that means an adjustment every year based on the number of sales. If the government is picking up $5m worth of rent, would that not lead to a fair bit of confusion when you are selling, about how much you are actually paying?

**Ms CUMMINGS:** It should not lead to confusion from the pastoralists' point of view. This is a production tax. If you are making money, then you pay good rent. We see it as being fairer. If for any reason you have production issues or climatic conditions that mean you are not producing that year, then your rent is decreased to reflect the fact that you have not been producing.

**Mr CROWHURST:** … when the live export ban was on, then people were not selling cattle.

**Mr CHAIR:** Yes, we understand. We are limited to time, are there any other key points you want to put to the committee?

**Mr CROWHURST:** Just a quick question. Why are we limited to just $5m of lease money from the pastoral estate?

**Mr WOOD:** You would have to ask the Treasury.

**Mr CROWHURST:** That is fine. The reason I ask is that it is a huge asset that belongs to the taxpayers of the Northern Territory in Australia and we just do not seem to be getting a reasonable economic return on our investment for what the inputs are by the taxpayers from rates and everything else. They will argue the cost but they do get some fairly healthy benefits and usages of things of the assets belonging to the government.

**Mr CHAIR:** Are there any other key points you want to put across? I will throw it to the committee for any further questions.

**Ms CUMMINGS:** We think this is a fairer tax. We understand from a government budgeting point of view it creates some issues because you are not going to have a set amount collected. In reality, we understand the

pastoralists are just for federal live exports but any time there are some seasonal issues, the pastoralists can actually apply to have their rate reduced. In which case that impacts the government's budgeting process anyway.

We do not see that this is such an issue and it potentially—in a good year, if you collect above there it is up to government to be disciplined to set some of that aside from a budgetary point of view to accommodate the lower years.

**Mr CROWHURST:** It is more in line with (inaudible)

**Ms CUMMINGS:** From a government's point of view it is what you have in the mining industry anyway, to some extent. Some of those mines are not productions and some are at production rate. It is not that difficult to transfer that across to this area of resource.

**Mr HIGGINS:** Teresa, it is Gary Higgins. How are you?

**Ms CUMMINGS:** Good, thank you.

**Mr HIGGINS:** In your discussions this morning you have sort of criticised the estimated carrying capacity and some of the problems with unimproved capital value. What have you thought about improved capital capacity, in other words, the carrying capacity of land without any improvements? You would end up with a consistent evaluation over an extended period.

**Ms CUMMINGS:** If somebody puts the improvements in and they are making sizeable returns, the Territory does not see a reflection in that; it does not get a share.

**Mr HIGGINS:** But is the pastoralist not only getting a return on his capital investment, not on an investment of government?

**Ms CUMMINGS:** Yes, but you could say the same of—if you come back to the unimproved capital values, to some extent that is measured on land prices and sales. If somebody actually upgrades their asset it sells for a greater amount of money because of the asset upgrade. Ultimately, that starts to affect the land price underneath that.

Unimproved capital value ultimately gets reflected by development that the individual does. We do not see that as an issue.

**Mr CHAIR:** Thank you, Teresa, Geoff and John and on behalf of the committee we thank you for your submission.

**Ms CUMMINGS:** Sorry, we did have the other issues of some concerns about the potential for what is going on in the way the land access agreements are being negotiated and the implications for Developing the North on that.

**Mr CHAIR:** It is in the submission. You can send us anything else you want, Teresa. We are running out of time because we have a lot of other sessions booked in after you. Thank you for your time today. Thank you Geoff and John. We take all those comments on board and they will be recorded and in the brief. Thank you very much.

**Ms CUMMINGS:** Thank you.

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**Herron Todd White (Northern Territory) Pty Ltd**

**Mr CHAIR:** I am Tony Sievers. I am the Chair of the committee and I would like to introduce you to all of our committee that are here today. And thank you for coming along. And I have a document to go through just to make it very clear how we run the committee and so forth.

On behalf of the committee, Frank, we would like to welcome you to this public hearing into the Pastoral Land Legislation Amendment Bill 2017.

I welcome you to table to give evidence to the committee, representatives from Herron Todd White (Northern Territory) Pty Ltd. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and it is being webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go into a closed session and take your evidence in private.

And I understand you have a document you want to provide to the committee in confidence?

**Mr PEACOCKE:** I do. Yes.

**Mr CHAIR:** Could we accept that the committee is happy to accept that document in confidence? Thank you, Frank.

And for the record Frank could you please state your name and the capacity in which you are appearing here today.

**Mr PEACOCKE:** Frank Peacocke. I am the Director at Herron Todd White Property Valuers in Darwin and I am the rural director and I come here in that form.

**Mr CHAIR:** Great. Thank you Frank. Frank, would you like to make an opening statement to the committee?

**Mr PEACOCKE:** Yes. In my submission I stated fairly clearly that the pastoral rental valuation is something that I know fairly well, because we have undertaken the 2015 assessment and we also reviewed several of the assessments prior to that.

It was a big job knocking that thing back into shape because it got out of whack and this is all about relativity in terms of pastoral landholders paying their fair share of rent. Under the proposed changes to the act, I feel that it is moving away from a market-based assessment and to one that is just a mathematical assessment based on a carrying capacity times the rate.

In summary, it does not allow whoever makes the decision on the rental factor—the pastoral lease rent factor—does not allow for any consideration of a property's qualities, apart from carrying capacity. It does not into account location.

I have to say, it is proposed that there will be different districts and they will receive a different rental factor which is made by the minister. But that is not enough because within single district there are properties that vary so significantly in terms of access, a number of things, all the things that drive a property's value. And I cannot see how a single rate per head of carrying capacity can lead to a fair outcome. It is all about—if there is a bucket of money, $5m that needs to be extracted from the pastoral estate, how is that evenly distributed between all pastoral lease holders.

That is something that was the main focus for us in taking and carrying out the 2015 UCV assessment. We had to reassess carrying capacities because they were in a poor shape and there was no evidence how they were undertaken, so we did that on the basis that it needed ongoing work because it is a big job that takes years and years. It took the Queenslanders 15–20 years to do it right. We knocked it into shape. We think we got that bit roughly right. I think according to DPIF it is probably the best model out there at this stage, but it needs constant refining.

The other side of it is, as a valuer—and I have been up here now 17 years and been over more than 75% of pastoral leases, most of them more than twice—it takes a bit of knowledge to make an adjustment in the value that is applied to that carrying capacity.

And just to clarify, the estimated carrying capacity is a description of the balance of country types on a cattle station. It is not the improved carrying capacity. If a property is made up of three parts, black soil, red soil and ranges, the black soil will carry more than the red and the ranges will probably carry less like on a head per square kilometre basis.

When we apply our estimated carrying capacities to that—(it is on the basis that if there is water available there or you are able to get it), how many head per or (inaudible) Adult Equivalents (AE) per square kilometre

could you carry—when on the black, on the red, on the gorges, and that gives you a sum figure that is really just a description of the land types. It is a long term, year-in year-out sustainable stocking rate. Over 10 years, a range of seasons, what the average would be (?), I guess is the thing. It counts for good years and bad and it is not an indication of the current economic stocking rate. If the pastoralist has a great season they will up it, if it is bad they will come below it, but there will be an average.

**Mr CHAIR:** Are you saying, to measure those qualitative items there needs to be a formula developed over time to ...

**Mr PEACOCKE:** Yes, I think we have done it pretty well, and I think the relativities is between the values of the properties is as good as it can be at this stage. What we want—if the government wants to extract $5m out of the estate and they do that by taking a percentage of the pastoral lease's UCV, they work out what the sum is of each UCV and it will be so many hundreds of millions, and then each property will have a value. Divide that (individual property value or UCV) in to the total sum that would be their proportion, and then they have to work out what the percentage is that they applied to that lease to generate the $5m, if that is what they want.

The good thing about the way it currently is—and I am all for trying to think of an easier, cheaper method—it is difficult, but the benefit of this method is that it should be fair. So someone with a remote pastoral lease where its value is less because if it went to market it would attract a buyer who understood the economic challenges that property has, so it gets a lower value. Whereas a big cattle station on the Barkly its UCV will be naturally higher. The idea is that everyone pays their fair share of rent, and whether the market increased 30% or dropped 30%, as long as the bucket of money was still $5m everyone really should just pay their same proportion of rent.

Unless the minister chooses to double the $5m to $10m everyone's rent will stay the same. Even if the market had lifted 30%, because the sum of the total UCVs would go up 30%—this is assuming every region remain the same, which is a problem that we have with this new (proposed) methodology because there will be regions that, over time, and I am talking five, 10 decades will come into being more valuable, so it does not allow for that.

To give you an example, if I have it right, the pastoral rent is now going to be estimated carrying capacity—the description of the capacity of the land, it is just a quantitative description—times the pastoral lease rent factor, which is determined by the minister—so it could be $1 or $2 times 10°000 a head, and that ($1 or $2 per AE) is the rent for a district. The minister has the right to review it every cycle.

So there is a couple of problems with that. If I applied—and this is where these documents come in as examples—I have just applied the current rate in the dollar to give me the rental rate per head, and I apply this single rate to every property in the district: Barkly or the Sturt Plateau. In some regions the changes are minimal, like the Barkly, it is quite uniform country down there. There is small fluctuation in current rents that is if everything remain the same, and I can tell you that out of the 28 properties in the Barkly there are only three properties where the rent lifts by 20%, and they all lift in this case. Actually they do not. Some go up, some go down. Three change by more than 10%. The biggest change is only 14% more, or only $5000, and the smallest change is down 7% or $10 000 on the Barkly.

I will not mention property names because it is confidential, but if I went to the northern Alice Springs district, and these districts are how the government has previously grouped them in districts: so you have the Sturt Plateau; Barkly northern; Alice Springs southern; Alice Springs; (inaudible) Precinct; Top End.

But if we apply the rate in northern Alice Springs that everyone is paying—well they are not—it is around $2.80–$3.00. If I apply that to the current estimated carrying capacities we have worked out—this is if I have it right and if that is the actual formula—the changes are substantial. Some are 5% to 6% but they range to a 45% increase. One is a 166% increase. So their pastoral UCV, the rent they are paying now is $17 000, it will go to $24 000. This is without any change in the market, this is just applying the same rate.

I can pick any rate: $5. It will not make any difference. And I can tell you that property, the 166%—because when I valued it, and it is quite remote, it has difficult access—it should not have the same dollar rate for the block just north of Alice.

I have done that over four regions. The Victoria River district, there are some big changes there: 65%, down 30%. So all the relativity we have tried to get back into the market place, by recessing carrying capacities and using our knowledge. We had a good team, fellows that had been around for a long time. We also interviewed

75% of pastoralists. We tried to ground truth as much as we could for a mass valuation project, and it is unprecedented, that is why we ran it.

If the pastoralist has to pay rent, and there are arguments why they should and why they should not, then I think this is the fairest way to spread that cost. It is like a unit entitlement, as I said in my submission. If you have a unit entitlement, the person on the top (floor) has a property that is worth more. The better views, just the way it is, it is worked out that within the lump sum of the value of that unit block, the top unit holder will pay the most in levies. It is not too different to that.

**Mr CHAIR:** Thank you. I am going to throw it out to the committee.

**Mr WOODS:** I just want to ask you an information question. What are general rates, the lowest up to the highest, regardless of the size? What do stations pay, per year?

**Mr PEACOCKE:** I will pick the Victoria River District, which is a corporate-type district, it attracts the big corporates. I will not mention the property, but one of the better ones would be about $60 000–70 000, but there are some larger ones that would be more than that. The range is $10 000–200 000.

**Mr WOODS:** And that is based on …

**Mr PEACOCKE:** Size, location, carrying capacity, access.

**Mr WOODS:** The normal principals of unimproved capital value?

**Mr PEACOCKE:** Yes, the normal principals that drive any market value. That is the thing. This is moving completely away from the market. That is one of my other concerns. The Minister has the choice of shifting around the rate. He might make it $2, he might make it $4. Who advises him?

I have already shown in the step before that, within a district itself, the properties are too different. I have not done the Gulf district but I already know there are properties there on the wrong side of two rivers, a lot further from markets. If you apply the same rate, per dollar, it does not stack up.

I have been told the sums have been run and I am worried that somehow I have the calculation wrong, but if it is just estimated carrying capacity times a rate that everyone in the district shares, it cannot possibly work. It cannot possibly be fair.

On the Barkly it is not too different because they are almost homogenous. But even then there are differences.

**Mr WOOD:** Could I follow on from that? I raised it before and it was raised earlier. One of the concerns about UCV was the high fluctuation—one year it is this and one year it is that. If the government has a set target for how much revenue it has, surely the government then could manipulate the percentage it wants from that uni8mprove capital value?

**Mr PEACOCKE:** Yes, they can. That is the thing I just cannot get my head around. The big fluctuations came in 2006, 2009 and 2012. That was a combination of the UCV process—I know about this because we were asked to check on the drafts. Somewhere along the line—it could have been the carrying capacity assessments – the relativities got out of whack. Then pastoralists rightly objected and had them changed. But I could not even see how the changes or adjustments were made. It just put them further out of whack. Then the market went up 25% per annum for five years or something, so it just blew everything out of whack.

The problem is—and I accept this—it has taken me 10 years just to get my head around the relativities. That is how long it takes. There are not many rural valuers out there. I am not going to necessarily be around for ages. So, it is a problem. I can see how—if you thought more about it, there are good people in government and there should be a system of people the valuer needs to speak to in order to stay relatively close to reality.

There are 227-odd leases and it is the valuer's skills, I guess, to look at that one and say, 'It is definitely two-thirds better than that one, or 90% as good as that one'. And the carrying capacity gets you half way there. It only gets you half way.

**Mr CHAIR:** Thanks, Frank. We are limited for time, and I know Mr Collins has some questions.

**Mr COLLINS:** It might not be a quick one. You heard the submission before from NARMCO …

**Mr PEACOCKE:** Yes.

**Mr COLLINS:** … about the production tax as opposed to valuation. What are your comments on that?

**Mr PEACOCKE:** I have thought about that – a bit like an MLA levy. It would be small because at the moment—whatever it is, it would be small. I guess it would tie in the rent payable based on the cattle market and more the economics. But so does market value because people pay more for properties when the cattle market is good. There is a bit of a time lag that is the problem. Yes, I just have not thought too much about—however it might be like a tax on development?

**Mr COLLINS:** That is the question, isn't it?

**Mr PEACOCKE:** Yes, in the end, you have an underlying thing—you are renting on the basis of it being unimproved, unless they change that completely. If they are looking for a way that does not involve this, it is quite a tricky process to do this. But property is just tricky. When you buy a unit, it is not—someone should run some models and see, over a series of fluctuating markets, against historic property value movements, whether it works and is relative enough.

But the market will change, particularly with developing the north. If you do not keep a tab on what land is worth, then things will skew over time.

**Mr CHAIR:** Thanks, Frank.

**Mr WOOD:** Is it worth us looking at Western Australia and Queensland, or are we not in that bracket?

**Mr PEACOCKE:** What they do?

**Mr WOOD:** Yes, what they do. Can we compare?

**Mr PEACOCKE:** We are pretty similar to Queensland. Their act is probably a lot clearer. Ours is a bit open-ended, which worked well for me because there are some things—in the end we start off with a property sale because there are no vacant land sales, and we take off the added value of all of the infrastructure. There is also a certain amount of value that is taken off for the goodwill side of the property. That is probably another conversation.

We follow the Queenslanders pretty much. The acts are not too different. Western Australia is a little different, but essentially it is a rent as a percentage of unimproved capital value. How the value comes up with the UCV—you read the act and say, 'The best way to do that is this'. So, we do.

New Zealand does it differently and they have looked at that. But that is New Zealand. They have mountains and do things very differently. It is what is relative to the country or the state.

**Mr CHAIR:** Any other questions from the committee? All right. Thank you, Frank, for all your submissions. We will look at the other one you have left us today as well.

**Mr PEACOCKED:** Yes.

**Mr CHAIR:** We appreciate you coming in as well today. Thank you for the information. It has been…

**Northern Land Council and Central Land Council**

**Mr CHAIR:** We will continue the proceedings. Welcome and thank you for coming, Joe and Michael. David is an apology?

**Mr MORRISON:** Yes.

**Mr CHAIR:** Is there a James?

**Mr MORRISON:** There is an apology from both.

**Mr CHAIR:** On behalf of the committee, we welcome everyone to this public hearing into the Pastoral Land Legislation Amendment Bill 2017. I welcome to the table to give evidence to the committee representatives

from the Northern Land Council and the Central Land Council. We thank you for coming before the committee and appreciate you taking the time to speak to the committee. We look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly website. A transcript will be made for use for the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask the committee to go into a closed session and we can take your evidence in private. For the record, could you please state your name and capacity in which you are appearing today?

**Mr Morrison:** Good afternoon and thank you, committee members, for having us here today. My name is Joe Morrison, I am the Chief Executive Officer of the Northern Land Council and I am joined by the Principal Legal Officer of the Northern Land Council, Michael O'Donnell. I want to make a short statement if that is okay.

**Mr CHAIR:** That it great. We usually introduce the panel, do you know everyone?

**Mr MORRISON:** Yes.

**Mr CHAIR:** Great.

**Mr MORRISON:** I think the NLC's position on the bill you are considering today is pretty plain and straightforward. I think our position is well known from various media events. We have stated on the record that the pastoralists do not have exclusive rights nor ownership of the land on which they are leasing. Native title where it has been determined over the pastoral leases provides for coexisting rights with native title holders.

The Northern Land Council and Central Land Council were rightly alarmed when we first became aware of the contents of this bill. Like the Central Land Council, we were not consulted about this bill which severely curtails the rights of native title holders. I recognise that Chief Minister Michael Gunner moved immediately to address our concerns and to refer the bill to this committee and I thank him for that.

Our position should not be taken as antagonistic towards the Northern Territory Cattlemen's Association or Territory cattlemen in general, even though the government consulted with the Northern Territory Cattlemen's Association and not the land councils as the native title representative bodies. Our fight is not with the NTCA; I want to make that very clear. In fact, there is a long history of the land councils working with the NTCA around the Indigenous Pastoral Program to create jobs on the pastoral estate.

Many people who have advocated for this bill have said this is a natural extension of the non-pastoral use permits and its administration, and that it is just an administrative process. I say the bill is a step too far, because it is a matter of personal regret that the Northern Land Council did not rise up to oppose the legislation in 2014 prior to my appointment. The rights enjoyed by native title holders are already fragile enough, especially because of the Howard government's 1998 amendments to the *Native Title Act*, otherwise known as the '10 Point Plan'.

The bill entrenches the Howard amendments because native title holders will not have a right to negotiate or a say if a pastoralist wants to create a sublease that will have a lasting effect on native title holders' rights, whose ancestors have lived on those lands for tens of thousands of years.

What we are seeking is for native title holders and pastoral leasers to have a say in the development at subsequent grant of any non-pastoral use permits or subleases. We are also seeking to ensure that Indigenous interests are taken into consideration in the deliberation of the Pastoral Land Board by suggesting that there be a specific position created on the Pastoral Land Board for Indigenous people.

We are hoping that this committee will concur with those two major recommendations and I conclude my opening statement.

**Mr CHAIR:** Great. Thanks Joe, we appreciate that and we do understand the sensitivities around it and the Cattlemen's Association have said they have good relationships and done good things with you in the past. I might open it up to the committee if they have any questions.

**Mr WOOD:** You raised a point that always worried me Joe—not worried me I was just confused about it. You said that there were changes in years gone by and I thought when those changes were going through, I was expecting the Land Council to say, 'Well, we have some concerns', but I did not hear anything. So my

presumption was there was no issue with this particular change to the land tenure. Is it a case of now bringing forward your concerns? Is it that they are too late because some things have already been previously permitted? Can you turn back the clock in some ways, can the changes be retrospective that you think should happen?

**Mr MORRISON:** I will just clarify. When these first amendments went through in 2014, I was not the Chief Executive of the Northern Land Council at the time, so I want to make that clear. Personally and professionally I do have some regret about the fact that the Land Council did not say anything about that, when in fact I thought that the Land Council should say a lot about it.

The amendments that took place in those negotiations under the Howard government in 1998 were in fact setting the groundworks for what we are discussing here today and the Principal Legal Officer next to me was part of those original negotiations with the governments and Indigenous leaders at the time and I will defer to Michael to say more about that.

But obviously what we are asking for is for the Northern Territory government to rise above the sort of view that there is simply an administrative change to put these effects into place, but to in fact consider something new that is to allow for substantial change for native title holder who have recognised title rights determined by the federal court in the future of the pastoral estate.

**Mr CHAIR:** Joe, how have the consultations happened now between native title and pastoral?

**Mr MORRISON:** There is a procedural right and that is basically a letter to the Land Council, on behalf of native title holders, to basically tell them that there is a development being proposed on a pastoral lease and there is, obviously, an objection process which I think is not considerate and nor is there is any form of compensation for that to take place. I might just hand over to Michael to further …

**Mr O'DONNELL:** It is not strictly—legally speaking—it is not even an objection process, it is an opportunity to comment. If native title holders have concerns because of the nature of the development and the restrictions on their rights, they have no right to an independent determination.

For example, with the right to negotiate provisions that used to apply, the National Native Title Tribunal acts an independent arbitral body that can determine issues. This has become what you would suppose call a minor procedural right that you get notified that X pastoralist want a non-pastoral use permit to grow opium poppies on such and such, can be rather large areas of land that, by the very nature of their development, mean you cannot exercise native title rights and interests anymore because it needs to be fenced off, there are security considerations, all sorts of things. Then, if the native title holders concerned want to be compensated for that, they have to run a court case, effectively after the event.

The current test case for native title compensation which has been run in this jurisdiction at Timber Creek has been going on for close to 10 years now and has cost more in legal fees than what the judge awarded at the first instance. We are up before the High Court on special leave applications on 16 February. But that is an Australia-wide problem, it is not only a Territory problem.

The fact is, the non-extinguishment principle applies. At the moment you get a non-pastoral use permit that is of a 30-year term. If this amendment was to go through, it would be a registerable sublease, which is proprietary interest, permanent for the period of the head pastoral lease. That effectively sterilises that area of land - which can be up to half of the pastoral lease legally under the *Native Title Act*—for many years if not decades. People then have to run an expensive court case to get compensation.

The right to negotiation provisions originally were primarily not a veto. That was negotiated with the Keating government. Aboriginal leaders put that they should have equivalent rights to the Land Rights Act and they should have a say about what happens on their traditional land. That was not agreed, but ended up with the rights to negotiate, which requires before a valid grant is made that Aboriginal people are at the table negotiating about the type of development that is on their land—as well as the other parties of course. If there is no agreement, there is an independent arbitral body that can make a decision. At the end of the day, there is a ministerial override.

Now we are left with the situation for native title holders where they have a right to get a notice and opportunity to comment—and there it goes. You can catch up with the compensation case later. That is really, in broad terms, the primary concern. With the best of intentions, some people have moved these amendments forward and see them as merely a technical land tenure exercise.

It has been quite an historic view as to what is being implemented in Aboriginal rights. It is not something the Territory government has to do. The *Native Title Act* empowers a state or territory parliament to do it, it does not mandate that it does it. There is some discretion within this parliament to determine how these things can work. It cannot be inconsistent, obviously, with the *Native Title Act*. It is not without its legal complexity, but there are, I believe, ways forward to get Aboriginal people at the table with the pastoralists to be involved in these activities.

**Mr CHAIR:** Yes, great.

**Mr HIGGINS:** The issue of people saying this is just an administrative change—and that is their excuse—was based on the amendments of 2014. Do I interpret that right?

**Mr O'DONNELL:** Well, it is primarily based on what the federal parliament has empowered under the 10-point plan legislation and 1998 amendments. The non-pastoral use permits were enacted by the previous government …

**Mr HIGGINS:** In 2014.

**Mr O'DONNELL:** Yes, in 2014. They were a half-way house, if you like, in implementing those federal amendments to allow for diversification. This is like a complete implementation, if you like. This is not just a permit, it is a registerable lease that can be held by a different party than the pastoralist. It is like a windfall.

I add that neither of the land councils are opposed to diversification on pastoral leases per se. Economic development is as important to Aboriginal people as it is to anyone else, but it has to be on the right terms, respectful and get Aboriginal people to the table and not isolate them.

If you fully implement these amendments at the Territorians level you are really alienating Aboriginal people from economic development on their land because parties can just go ahead without legally being required to have regard for their interests.

We all know how many agreements that were negotiated for native title exist. There is a whole lot of complexity and complaints but the fact is that some of the major agreements have benefitted Aboriginal people in terms of employment contracting and royalties, especially in places like the Pilbara. That only happened since the *Native Title Act* came in.

Unless you have substantiative rights like the right to negotiate, or something equivalent, then it is all a matter of goodwill or not as to whether or not is happens as a right.

**Mr WOOD:** This might be out of left field a bit, and I have not asked anyone else—if someone does a sublease on a pastoral property, is there a planning requirement? Would you have to put an application in for a sublease and then people can put in their objections or support for that particular development? Do you know if there is a requirement for a sublease on a pastoral property to be advertised under the *Planning Act*?

**Mr MORRISON:** I am not 100% sure of that but I do not believe so. I am pretty sure it is not the case.

**Mr WOOD:** Usually where the *Planning Act* applies, issues you mentioned that arise will be part of that discussion as to where native title has to be included in the discussion as well as environment, local council, Telstra—I do not know where that applies.

**Mr MORRISON:** I do not think so.

**Mr CHAIR:** Have you had discussions with the department?

**Mr O'DONNELL:** Mr Morrison and I originally had some discussions with the minister and departmental representatives in October when we first learned of this and that led to corresponding with the Chief Minister who gave the undertaking that Mr Morrison referred to. More recently, we met with some of the departmental people yesterday and we have agreed we will continue talking to see what can be achieved.

**Mr COLLINS:** In terms of any proposed amendments?

**Mr O'DONNELL:** Yes.

**Ms UIBO:** Mr Morrison and Mr O'Donnell, in your submission the NLC is proposing that the legal right to be recognised under the PLA exists. Can you elaborate a little more on that?

**Mr O'DONNELL:** It is being proposed that the amendments to the *Native Title Act* are not within the ambit of this parliament. As with, for example, the Strategic Indigenous Reserves with the *Water Act*, one can supplement rights that Aboriginal people have in terms of land rights or native title. There may be other legislation that could be used.

Given that this is primarily about regulating what happens on pastoral leases we thought it was more appropriate that there be something inserted in the *Pastoral Land Act* that would provide something equivalent to the right to negotiate to ensure Aboriginal people are at the table in terms of the negotiation of the diversification of these activities and any agreements that are struck. It is being proposed in broad terms.

**Mr WOOD:** if that was the case, how would previous diversification on pastoral properties fit into that? Pastoral properties have been allowed to diversify since the changes to the 2014 legislation. If you bring in something different to that, will it apply to diversification that has occurred before?

**Mr O'DONNELL:** The lawyer in me would say that as a matter of land tenure, you do not retrospectively change the law. The native title holders may well have a different position about that given they have missed out. I imagine it would be prospective and not retrospective.

It is important to talk with government about if there is another way of making sure people are involved at a policy level—not necessarily a legal level in those prior developments, but I suppose it is water under the bridge at this stage. If we can get the legislative settings right for the future, that is probably the main thing.

**Mr HIGGINS:** That would get a handle that when they go to register is though, would it not? Looking forward if you said that you want to be able to register this you would need to actually negotiate, which would then pick up the ones going backwards which are not registered at the moment. Is that possible?

**Member** interjecting.

**Mr MORRISON:** Well, you have heard from the lawyer. Ultimately you would probably just need to focus on the future, Gary. That is the most important thing. If you get the settings right and in future negotiations with the intensification of developing northern Australia then I think that is the most pragmatic way forward.

**Mr CHAIR:** You mentioned in your submission, having that Aboriginal position on the Aboriginal Protection Authority, you proposed that. Have you discussed that with ...

**Mr MORRISON:** On the Pastoral Land Board, yes. I think that there could be benefit in having an Aboriginal person that is across these matters on the Pastoral Land Board, and given the native title rights and interest and the determinations that are taking place, particularly in our region, there is substantial Indigenous interest on a pastoral estate.

**Mr O'DONNELL:** We have, as our submission says, there is currently 62 determinations on 63 pastoral leases. There is quite a substantial amount of native title. I think the AAPA submission refers to that point about there being Indigenous representation on the board. You may want to consider that, maybe more specifically relevant native title holders.

**Ms UIBO:** Mr Chair, I think from my understanding, for your information that I had this week that there is an Aboriginal representative on the board, and that is an Aboriginal pastoralist. Maybe you are referring to looking at expanding to native title holder representation because there is an Aboriginal person as I understand already on the board.

**Mr MORRISON:** That is right, obviously skills based, so someone who is across native title and relevant legislation.

**Ms UIBO:** Yes, looking at the legal aspect as opposed to the industry aspect.

**Mr CHAIR:** Any other questions from the committee? Anything before we wrap up?

**Mr O'DONNELL:** The AAPA submission refers to, which the land council submits as appropriate for this committee, to support that there would be specific reference to conserving and protecting sacred sites in the legislation. That an applicant for a permit be compelled to have an authority certificate, so given the intensive

nature of these developments—the authority certificate, as you probably know, acts as defence to a criminal charge but there is no requirement that you actually get the certificate. So, it would be a great assistance, I think, to our comfort and confidence of native title holders and Aboriginal custodians if that was a requirement, like a standard planning requirement that those certificates be obtained.

If I could just point out in terms of the detail about native title holder representation, at the moment it is a discretionary thing about Aboriginal representation, there is nothing mandated in the act. If I could make one point about your terms of reference, your terms of reference are very much focused on individual human rights. It talks about—the committee's terms of reference in 4c talk about whether the bill has sufficient regard to the rights and liberties of individuals. In circumstances like this we are actually talking about customary tenure, the rights of groups and collective rights. It would be in our submission worthy of consideration maybe to broaden that to ensure that we include the full range of human rights that exist especially in a place like the Territory.

**Mr CHAIR:** Thank you Joe and Michael. We do appreciate your time and your submission and thanks for your time today.

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The committee suspended.

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**The Pew Charitable Trusts, The Environment Centre (NT) and Arid Lands Environment Centre**

**Mr CHAIR:** Welcome everyone, we have some formalities to go through. On behalf of the committee, I welcome everyone to this public hearing in to the Pastoral Land Legislation Amendment Bill 2017.

For those on the phone, my name is Tony Sievers, I am the Chair of the committee. We might get the committee members to introduce themselves.

**Mr COLLINS:** Jeff Collins, I am the Deputy Chair and Member for Fong Lim.

**Ms UIBO**: Good afternoon, Selena Uibo, Member for Arnhem.

**Mr HIGGINS:** Gary Higgins, Member for Daly.

**Mr WOOD:** Gerry Wood, Member for Nelson.

**Mr CHAIR:** I welcome to the table to give evidence, the representatives from the The Pew Charitable Trusts, The Environment Centre (NT) and Arid Lands Environment Centre: Mitch Hart; Pepe Clarke; Jimmy Cocking and Alex Read. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public, you may ask the committee to go in to a closed session to take your evidence in private.

For the record, could you all please state your name and the capacity in which you are appearing. I will start with you, Pepe.

**Mr CLARKE:** Pepe Clarke, Deputy Director of The Pew Charitable Trusts Outback to Oceans program.

**Mr HART:** Mitch Hart, Northern Territory Manager, Pew Charitable Trusts.

**Ms MOLLOY**: Shar Molloy, the Director of the Environment Centre NT

**Mr COCKING:** Jimmy Cocking, Chief Executive Officer of the Arid Lands Environment Centre.

**Mr READ:** Alex Read, Policy Officer, Arid Lands Environment Centre.

**Mr CHAIR:** Would anyone like to make an opening statement, or are there a number of opening statements? All right, due to time limits, we have allowed 20 minutes per session. You can table those opening statements if we do not get through them. We are concerned about time, but we really want you to make your points.

**Mr HART:** Thank you Mr Chair. We appreciate the opportunity to appear before the Committee to provide comment on the Pastoral Land Legislation Amendment Bill.

The Pew Charitable Trust is an international research and public policy organisation that works with landholders, traditional owners, conservation organisations and policy makers in Australia to promote conservation and sustainable management of outback landscapes.

It is a central premise of our work that nature needs people. Key threats to the natural values of outback Australia, like feral animals, weeds and wildfires, need active management by people living on the land, and we believe this would should be valued and supported.

We would like to focus on the opportunity to increase investment in conservation and carbon abatement on pastoral lands by amending the list of prescribed non-pastoral purposes in Regulation 31 of the Pastoral Land Regulations.

We note that the addition of conservation and carbon abatement to the list of prescribed purposes is supported by the Northern Territory Cattleman's Association, the Arid Lands Environment Centre and the Environment Centre of the Northern Territory.

By permitting pastoral lease holders to enter into a sublease for these purposes, this amendment would provide investment certainty for public, private and philanthropic organisations wishing to invest in conservation and carbon abatement on pastoral lands.

For pastoral lease holders, entering into a conservation or carbon abatement sublease would provide an opportunity to diversify their income, while conserving important environmental values and maintaining land health and productivity for the long term.

To date, the pastoral sector in the Northern Territory has derived limited income from carbon abatement, with the lion's share of funding under the Australian Government's $2.5bn Emission Reduction Fund flowing to other states and territories.

Permitting the issuing of subleases for conservation and carbon abatement would provide new opportunities for collaboration between pastoral lease holders and native title holders, including Indigenous ranger teams funded by federal and Territory governments.

We note that conservation and carbon abatement would not normally fall within the definition of primary production activities in the *Native Title Act*, and for this reason the grant of a sublease for these purposes may require an Indigenous Land Use Agreement. We have prepared a supplementary submission dealing with these issues and would be pleased to expand on these points as needed. Thank you.

**Ms MOLLOY:** Thank you. I begin by acknowledging the traditional owners of the land that we work and meet on here today; the Larakia people, and I pay my respects to the elders, past, present and emerging, and also pay my respects to other Aboriginal people that are listening and also here. Thank you.

Thank you Mr Chair, we also welcome the opportunity to comment on the government's proposed amendments to the *Pastoral Land Act* and Pastoral Land Regulations.

Established in 1983, the Environment Centre is the peak community sector environment organisation in the Top End.

Encompassing an area of 59 million hectares, the pastoral estate comprises 45% of the Northern Territory's land area. These landscapes are home to important environmental values, including rare wildlife, diverse ecosystems and internationally significant wetlands.

The land uses the government proposes to add to the list of prescribed purposes in these Pastoral Land Regulations: agriculture; horticulture; forestry; and aquaculture, may have significant impacts on these important environmental values.

By granting subleases for these purposes, the Minister would facilitate large-scale conversion of relatively natural rangeland habitats to far more intensive land uses. The stated purpose of the *Pastoral Land Act* is to provide a form of tenure of Crown land that facilitates the sustainable use of land for pastoral purposes and the economic viability of the pastoral industry, and also, significantly, to provide for the prevention or minimisation of degradation or other damage to the land and its indigenous plant and animal life.

Clearing of native vegetation, infrastructure development and increased water extraction associated with land use intensification would modify and degrade pastoral lands in a manner that is inconsistent with the purposes of the *Pastoral Land Act* and government's commitment to protect the unique natural environment of the Territory.

We note and are very much involved in the government's current review of existing legislation in relation to environmental assessments and approvals, land clearing and water management and strongly recommend that the committee carefully consider the environmental risk associated with poorly regulated intensification of land use in pastoral landscapes.

We believe that it is premature and inappropriate to open the door to largescale conversion of pastoral land while these reviews are still under way. We urge the government to withdraw its proposal to permit subleases for agriculture, horticulture, forestry and aquaculture and instead we recommend that the Pastoral Land Regulations be amended to permit subleases for carbon abatement and conservation; land uses that are consistent with the purpose of the Pastoral Land Act and the health and productivity of our rangelands. Thank you Mr Chair.

**Mr CHAIR:** Pepe or …

**Mr CLARKE:** I am fine Mitch has covered our points. Thank you Mr Chair.

**Mr CHAIR:** Jimmy, would you like to make an opening statement?

**Mr COCKING:** Thank you. (inaudible) We concur with much of what has just been presented by Pew Charitable Trusts and the Environment Centre.

In addition to that, one of the recommendations that we made to the inquiry was also to include the permission of ecologically stable development in the objects of the act, given that it is in regards to land. We do want to make sure that the pastoral estate is being managed for generations to come and ensure that any economic development there is being done under the principles of an ecologically stable development.

**Mr CHAIR:** Yes, right. All right. I might open it up to the floor. I have a few questions I might start if you want?

We have all read your submissions, and thank you very much for those. Your submissions raise a number of concerns regarding the potential of degradation resulting from non-pastoral activities. Are you aware of any increases in environmental impacts on pastoral estates where permits for non-pastoral activities have been granted? Are you aware of any that—where it is happening now or you have been involved in?

**Ms MOLLOY:** I will acknowledge that we do have current environmental regulations and the way the NTEPA makes decisions currently. I would suggest that there is with some of the environmental regulatory form that is suggested that it would actually give our organisation and other stake holders much more capacity to actually be able to—once decisions are made—appeal that or to put other kinds of arguments.

I suggest that there are significant environmental risks associated with development and to the point where some of them are so significant that they need an independent oversight.

Yes, there is definitely 'in time will tell' on some of those developments.

**Mr WOOD:** Can I just follow up on there?

**Mr MOLLOY:** Sure.

**Mr WOOD:** Would you—mentioned it before—if these developments came under the planning authority and under the *Planning Act*, would you consider that something that would least—might cover all your concerns—but at least cover your concerns because the *Planning Act* does allow for matters that could be—have a major effect on the environment, being sent for an environmental impact statements or a PER. But at the same time they also take into account what government departments like Department of Land Resources, when it comes

to erosion, water, et cetera. Would you support the idea that these applications have to go through the planning process as a—at least—some way to cover some of the concerns that you have?

**Ms MOLLOY:** No, I think that needs to go much larger than that. If we also consider large land clearings that have recently been approved as well, there is acknowledged, particularly in regard to climate change impacts, that there is not a current climate policy. At the moment, they are not even considered by the NT EPA. It is much broader than planning issues.

I defer also to Jimmy and Alex because they would possibly have something to add as well.

**Mr CHAIR:** Yes, Jimmy and Alex?

**Mr COCKING:** Yes, thank you, Mr Wood. There is a real opportunity there to look at how that could interact. The challenge is that when a big development is being planned on a pastoral estate it can slip through the net and there are not any clear guidelines for the EPA to assess it.

Again, the *Planning Act* and the planning system is all up for review at the moment. Alex has put in a submission in regard to the *Planning Act* recently as well. In the same way that the environmental assessment and approval process is all up for review and in the process of developing – in our understanding – a new act to cover environmental protection with some regulations, if this work could come under the *Planning Act* there would need to be – from our perspective – the ecological sustainable development principles would have to apply to the planning system and *Planning Act*.

But at the moment there needs to be a greater understanding of how all these acts interact and the need for some better integration of the regulatory framework around these big developments.

**Mr CHAIR:** Yes, thanks, Jimmy.

**Mr CLARKE:** Mr Chair, may I add briefly …

**Mr CHAIR:** Yes.

**Mr CLARKE:** … in response to each of your questions. There have been relatively few non-pastoral land use permits granted to date, although some of them involve quite significant localised conversion of the habitats that are currently there.

However, it is our understanding part of the intention of this reform is to attract much greater third-party investment on the pastoral estate. It is useful to reflect on the scale on which those developments could theoretically occur, given the large size of pastoral properties in the Northern Territory and the fact that up to 49% of the property could be theoretically developed if the land and water resources were appropriate for that form of development.

Given the government has acknowledged some of the existing deficiencies in the environmental protection system in the Northern Territory and has reviews under way, we feel it would be prudent to complete those reviews, particularly in relation to land clearing and water resources, before opening the door to what could be a significant flow of development in intensive land uses.

**Mr CHAIR:** Yes.

**Mr HIGGINS:** Jimmy, in your submission—I cannot find the exact reference—you talked about the estimated carrying capacity and changing it from 10 years to five years. There has been some discussion this morning about using that unimproved carrying capacity as opposed to the estimated carrying capacity, which could be pasture improvement. Can you give us a bit of logic behind why you would go from 10 years to five years? Would 10 years be more appropriate if it was unimproved? In your comments you said you might get degradation of the land in a very short period and 10 years is too long a period before that is brought to their attention. If I have read it right.

**Mr COCKING:** Mr Higgins, in regard to that our concern was that 10 years is a long time considering there is a difference between the Top End and the bottom end of the Territory. (Inaudible) changes we are seeing and the fact that you have dry years and wet years and we need to keep reviewing those process. It is a long time. I even commend that there is some discretion in there for it to be called in different times as (inaudible) change as well, depending on the climate (inaudible) or the issues that might impact on the carrying capacity of the land.

The other issue we had is we had not seen the modelling around change of moving from unimproved capital value to carrying capacity or land value to carrying capacity. I wanted to ensure that the impacts on Treasury are not going to be great and are predicted and accounted for given the current financial situation.

**Mr HIGGINS:** The financial position is that the government always wants to get a return of $5m from its pastoral assets. The thing is, it doesn't matter what formula they use, they will always aim for that $5m. The change in how they calculate the return does not matter; they will always manipulate the figures so they end up with $5m. Do not ask me the logic behind that, I am just telling you.

**Mr COCKING:** For Half the Territory, they are only paying $5m a year in rent. For half the Territory that seems considerably cheap.

**Mr HIGGINS:** I did not say I would comment on the logic. There was debate this morning around whether you use unimproved carrying capacity or improved. If you are using unimproved carrying capacity, at no point will you ever do a review of the degradation that might occur if you understand what I am saying. Whereas, if you are using improved you will reassess it all the time as they improve it.

I presume your comment is more around if they are improving their land and if they go to unimproved carrying capacity, there is no capacity to look at that degradation, if you understand.

**Mr COCKING:** The challenge with this is it is relatively—improved land pasture generally means land clearing and planting potentially invasive species, particularly with what we have seen in the south in regards to that. There needs to be some more work around that because the challenge is that if it is unimproved then work can be carried out that would improve the pasture and the productivity of the land but that would not necessarily be reflected in the cost that would be paid by the landholder to the government for rent.

It increases the opportunity and while we do not want to negatively impact on the incomes of pastoralists and larger income earners for the Territory, we also need to be ensuring they are paying what it is worth to look after that land as well. Particularly with native plants, once it has been "improved" the impact on the natural values of that land can be considerably different.

It is different here in the south where largely, this is beyond invasive species like buffalo grass which has been planted out. It is natural pasture. It is very difficult here unless there is large-scale lands clearing and irrigation for there to be improved pastures. That is our main environmental concern, that when we start talking about improved pastures there are significant environmental impacts in that so called improvement.

**Mr HIGGINS:** I was just trying to get you to give the answer around improved pastures because there was a lot of discussion this morning about unimproved. You have clarified it, which is fine. You gave the answer I thought you would. Thanks, Jimmy.

**Mr CHAIR:** When you say a mandatory referral mechanism in your submission, to look at what happens on these pieces of land or subleases, what sort of qualifications does that person need to have to be able to assess those sorts of…

**Mr CLARKE:** It is a good question, different…

**Mr READ:** … Are you speaking to us?

**Mr CHAIR:** Pepe or you, Jimmy. Off you go.

**Mr READ:** That is alright if you want to jump in.

**Mr COCKING:** It goes to one of the terms about how decisions are made on the Pastoral Land Board and that it should include an increased diversity of expertise and background. In terms of making those decisions on non-pastoral uses, they should be made by people who have experience in environmental management, science, chemistry and other scientific entities, not just agricultural or pastoral experience.

**Mr CHAIR:** Right.

**Mr COCKING:** The ministerial referral refers to those processes, whether it currently occurs through mining projects and those sorts of things. Now it is through the Department of Natural Resources, is my

understanding, but we are yet to see how those referral processes work with what would be understood to be a significant environmental impact, on one level.

The guidelines that guide the EPA's assessment of those sorts of projects are not integrated with the Pastoral Land Board and the *Pastoral Land Act*, so there needs to be some work done to ensure the environmental impact of, particularly land clearing applications, which is more relevant up north than down here, but at the same time people are screening invasive grasses on their property as well. That needs to be considered.

**Mr CHAIR:** I only have one more question, unless anyone else has a question? You have had some discussions with the department? How have those discussions been and have they alleviated any of the items you have raised?

**Mr Clark:** They have been useful discussions and have allowed us to canvas some of the issues, particularly the opportunities associated with carbon and conservation, and some of the environmental risks we have been hearing about and also the interactions with native title law.

As Mitch briefly mentioned in his opening remarks, it is our assessment that carbon abatement and conservation sit outside the definition of primary production activities, in most cases, contained in the *Native Title Act*. For that reason, the native title issues that have arisen in consideration of this bill do not necessarily apply to carbon abatement and conservation in the same way.

If a proposed carbon abatement or conservation lease was likely to affect native title rights and interests, the Indigenous Land Use Agreement process established under federal law would provide an appropriate mechanism for a negotiated resolution of perspectives. It may mean that some carbon abatement or conservation projects would not go ahead. It may also open up some great opportunities for native title holders and Indigenous rangers and others to be involved, and also to share their growing expertise in the carbon abatement field, in particular, as well as conservation land management.

So there is a different set of native title considerations compared with the primary production activities that have been proposed in the current amendment bill.

**Mr CHAIR:** Thank you. Is there anything else you would like to add before we go?

**Mr Cocking:** We do support reform of the *Pastoral Land Act*, and I suppose in the long run, given the reviews of the *Planning Act* and *Environment Protection Act* or what is happening in that space, that substantial reform of the *Pastoral Land Act* is required and we hope that any tinkering around the edges will not defer any substantial reform in the long run.

**Mr CHAIR:** On behalf of the Committee, thank you for your submissions.

**Department of Environment and Natural Resources**

**Mr CHAIR:** Welcome Jo, Tania and Luis.

On behalf of the committee we welcome everyone to this public hearing in to the Pastoral Land Legislation Amendment Bill 2017. We welcome you to the table to give evidence to the committee representatives from the Department of Environment and Natural Resources, Joanne, Tania and Lewis. Thank you for coming before the committee we appreciate you taking the time to speak to the committee and look forward to hearing from you all today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go in to a closed session and take your evidence in private. For the record, could you please state your name and the capacity in which you are appearing.

**Ms TOWNSEND:** I am Jo Townsend, Chief Executive Officer of the Department of Environment and Natural Resources.

**Ms MALONEY:** I am Tania Maloney, Director of Pastoral Lease Administration and Board with the Department of Environment and Natural Resources.

**Mr DA ROCHA:** Luis Da Rocha, acting Executive Director for Rangelands, Department of Environment and Natural Resources.

**Mr CHAIR:** Ms Townsend, do you have an opening statement?

**Ms TOWNSEND:** I have a few comments I will make. Thank you for the opportunity allowing the department to come and speak about the *Pastoral Land Act* amendments being proposed. The *Pastoral Land Act* was established in 1992. Its principle objects are to provide a form of tenure of crown land to facilitate the sustainable use of the land for pastoral purposes and the economic viability of the pastoral industry, and that really does frame a lot of the developments that we had in the industry but also in the *Pastoral Land Act*.

The current proposed changes to the *Pastoral Land Act* are intended to resolve a number of administrative issues that have been identified by us. We have a key role to administer the act. There are a number of minor administrative matters like the numbers of members on the Pastoral Land Board, arrangements of rent payments and some other dated anomalies that get in the way of us being able to effectively administer it, but it also proposes changes to the rent methodology, which takes forward a commitment that was made to industry some time ago to reduce the volatility of pastoral rents. The reduction of that volatility is important to allow for long–term planning by industry.

The changes to the rent methodology came about because of a 441% increase in the rents invoiced in 2009—and some members will remember that—resulting in 120 objections out of 224 invoices issued lodged that year. We had a good six months of review with a number of those objections upheld. The concern at the time, and ongoing is at large market based fluctuations are not good for the industry overall. It also resulted in the Territory not generating income that year or not to the extent that we expected.

The methods being proposed are quite deliberately intended to reduce market volatility, using a carrying capacity based methodology. I appreciate that there are people who have a very strong view about the principles of market settings.

It is also important to note—and I note Mr Higgins already mentioned this—that the method for determining the baseline valuation of a pastoral estate is proposed to change, but there is no change to the process overall that we use to calculate rent. The pastoral lease rent factor is set by the minister each year, and it determines what the rent revenue will be. So, there is still a manipulation of the rent established through that pastoral lease rent fact, which is set each year by the minister. That is to ensure that a certain level of revenue is raised.

**Mr CHAIR:** Yes.

**Ms TOWNSEND:** Subleasing is the other change proposed. The key change for subleasing is proposed to allow for subleases to be registered on the title. The *Pastoral Land Act* has included non-pastoral use provision for certain purposes from 1992 and it has always provided for subleasing for certain purpose, specifically pastoral use and facilities infrastructure—telecommunications tower, pipelines, those kind of things.

In 1998, the *Native Title Act* amendment came into effect which specified the level of engagement with native title holders for non-pastoral purposes. That act requires that native title holders are notified if there is a request for non-pastoral use for certain allowable purposes. Those purposes are horticulture, agriculture, forestry and aquaculture.

In 2014, the Northern Territory amended its *Pastoral Land Act* to achieve three things: extend the term of a grant for a non-pastoral use permit from five years to 30 years; to issue that permit to the property rather than the lessee so it was able to be registered with the title; and amended the allowable uses for a non-pastoral use permit to align with those in the *Native Title Act* changes of 1998 described before. Those, again, are forestry, aquaculture, horticulture and agriculture.

When those changes were made in 2014, the allowable uses for sublease in the *Pastoral Land Act* were not also changed as part of those amendments, which means that subleases in regulations are still limited to the uses described in the original act. They are limited to infrastructure-type activities and pastoral use.

The sublease provisions in this bill are intended to encourage non-pastoral use - the non-pastoral use provisions that apply and diversification of the pastoral estate. This can occur now if the lessee seeks a non-pastoral use permit, but that lessee cannot then enter into a corresponding sublease agreement that is registered on the title. The effect of that is you may want to enter into a sublease for a certain type of activity—whether it is an agricultural development—but pastoralists may say they want someone with some expertise to take that on as a sublease. The person taking that on would ideally like that to be part of registration on the title, recognised on the title so they can use it for financing purposes.

**Mr CHAIR:** Yes.

**Ms TOWNSEND:** The current amendments in the *Pastoral Land Act* seek to align the existing sublease provisions with the allowable purposes in the *Native Title Act* and those listed in the *Pastoral Land Act* for non-pastoral use permits—forestry, aquaculture, horticulture and agriculture. We are aware, because we have spoken to as many of the submitters as we can, that has raised a number of issues around non-pastoral use, who benefits from those provisions and whether there is equity in those decisions. That is a broader question and one worthy of consideration, but not necessarily where we were going in these amendments.

For the benefit of the committee, we have offered to meet with all 12 submitters to the Scrutiny committee and we were able to meet with 10 organisations and representatives to date …

**Mr CHAIR:** Oh, good.

**Ms TOWNSEND:** We did this to clarify the concerns that were raised in submissions. We considered these discussions were constructive and clarified a number of matters being raised about the bill. They also provided us with some amendment options that we will be proposing to improve the understanding of the bill—very minor suggestions to government to improve the understanding of the bill based on those discussions, as well as policy ideas for implementation by the department, how we communicate some of the requirements and engage with stakeholders. They are policy decisions that we can take on board irrespective of the bill.

There are also a number of broader government policy matters being raised. I note we are following ALEC and the Environment Centre who have raised some of these policy matters. They are worthy of consideration either as policy or for further reform in law but they are outside the remit of this bill. I would consider them to be discussions we would want to pursue and continue and investigate more fully in terms of their compliance with the *Native Title Act* and/or the *Pastoral Land Act*. It is a significant policy shift from where these amendments have taken us.

**Mr CHAIR:** Great. I might open it up to the panel. We have a number of questions but I think you have covered some. Mr Higgins looks like he is …

**Mr HIGGINS:** Only a bit of clarity here. When we talk about the estimated carrying capacity for the setting of these rates, there has been a lot of discussion this morning and confusion around those. In his second reading speech, the minister implied it would be unimproved carrying capacity but that is not clarified in the bill. The cattlemen's association also raised that in their submission.

When I spoke to Jimmy he talks about five to 10 years because of degradation but implying you will have some improved things. Should there be some clarification in that or can you explain a bit more about that for us?

**Ms TOWNSEND:** I might ask Luis to talk through that.

**Mr DA ROCHA:** As part of those discussions Jo alluded to with the submitters, we have identified that there is a miscommunication in the bill in its current form. I want to state that unimproved carrying capacity and estimated carrying capacity are actually one and the same. How we come to a position which we will be recommending to government is to insert some clarity around that, specifically the word, unimproved; that is what is missing.

The advice we received is that unimproved carrying capacity is not a known term, whereas estimated carrying capacity is recognised. Does that alleviate? Those are the discussions I have had with not only industry but other submitters who have raised those issues.

**Mr HIGGINS:** That clarifies it. In the bill it will be stating that it is unimproved.

**Mr DA ROCHA:** It will still be captioned as estimated carrying capacity but in the explanation of what carrying capacity is, it will include unimproved should it be adopted by government.

**Mr HIGGINS:** Should it be approved by parliament.

**Mr DA ROCHA:** Sorry.

**Mr CHAIR:** I have a few questions, but does anyone else?

**Ms UIBO:** Mr Chair, we heard earlier today in one of the submission sessions, the Northern Land Council and their lack of consultation. I understand there is ongoing dialogue between the department and the Northern Land Council. I was just wondering if there is any clarity as to why there was not an outreach before the process.

They suggested that the NT Cattlemen's Association had been consulted in those developing processes for the amendments but they had been excluded from that process. I was just wondering if there was clarity if you could please speak to that, Ms Townsend.

**Ms TOWNSEND:** I am happy to state that the conversations with the NTCA were through their involvement with the pastoral rent working group and were limited to discussions about pastoral land matters. We did not consult on—the rest of the matters were relatively minor from our perspective in terms of administrative fix-ups but we also did not talk widely with groups around the subleasing provisions. The NTCA's position on subleasing had been public and raised at a number of forums so we knew it was something they were seeking to do.

We took the approach that the amendments to subleasing were relatively minor and largely resolving in administrative change from 2014, giving full effect to that change. Clearly, that is not the view the land councils have taken and there has been an admission by the Chief Minister that it was an oversight by the department to not engage with those land councils in the development of the bill. I can assure you that we are not engaging with other groups, to their exclusion.

**Mr CHAIR:** Are there any other rent methodologies options considered? Were there any other discussions around that? We have heard a few today.

**Ms MOLONEY:** Certainly. Cabinet directed an order to resolve some options around rent methodology that a number of issues be considered and that a working group be formed to consider that.

There are about five options that form the terms of reference for that working group to look at and assess. They include rent methodology based on ownership structure, we have the large multinational corporates and then right down to the small family owned ones. Ownership structure; a rent based on lease size, from the smallest ones just under 400 km squared to the largest one 7 000 or 8 000 km squared, that was looked at; a rent calculated on the estimated carrying capacity; and then the rent based on the unimproved value with the Northern Territory specific methodology for determining UV. Those were the things that the working group was charged with.

The working group consisted of representatives including the Valuer-General, someone from the Department of Treasury, two representatives from the Pastoral Land Board, three representatives from the Northern Territory Cattlemen's Association, Primary Industries and Fisheries—the then Department of Primary Industries and Fisheries—and then DNR. It had a broad range of skill set to assess that and over a number of years they looked at all those options and then whittled it down as the estimated carrying capacity being the most beneficial and workable out of the ones put to them.

**Mr WOOD:** Can I just ask?

**Mr CHAIR:** Yes.

**Mr WOOD:** But is it the fairest?

**Ms MOLONEY:** Is it the fairest?

**Mr WOOD:** Yes, because we have people, say today—if I have a station at Mistake Creek, I am a long way from the markets—unless the Wyndham Port is open—or if I am sitting on the Barkly near Mount Isa, I have

a lot of a better chance of getting my cattle out at a lot cheaper price, whereas the UCV does allow those issues to be taken into account. Do you think the ECC method is fair?

**Mr DA ROCHA:** It is about providing a level baseline. If we go back to Jo's opening statement when spoke about the 2009 valuations where you have fluctuations up to 441%, which equated to roughly $1.25bn fluctuation that is what government was trying to avoid, so people or pastoralists or the industry can plan forward having a steady baseline to work by. Whether it is fair or not, I am …

**Mr WOOD:** What were the reasons for the fluctuations again?

**Mr DA ROCHA:** It was market relativity and response to market rate.

**Mr WOOD:** But the government has control—as Gary has said—if you are looking at an income of $5m you can adjust those UCV payments according to the percentage you take …

**Mr DA ROCHA:** But that is still the bottom line though. However, individually, you are looking for the $5m.

**Mr WOOD:** That is right. But if you keep the—just for argument's sake—$5m is the gap, in regard to the fluctuations, that fluctuation would not occur if you have a capped amount you want to achieve. Because you obviously would raise a lot more money if everyone had paid when those fluctuations were on. But if you just have a target that the government needs to achieve and then balance the UCV through using the formula to fit within that and then you do not get the fluctuations. And then you do take into account Mistake Creek—which is a long way from nowhere, versus a cattle station sitting on the main highway.

**Mr DA ROCHA:** The only response I am going to say to that—Treasury—I was not a part of the working group personally. Treasury representation was on the working group. And it seems from the evaluations on ECC that were undertaken in 2015, out of the pastoral industry there was only two that questioned the evaluation. Everyone else—because we wrote two lessees based on that estimated carrying capacity and it only had two that questioned.

**Mr WOOD:** Did you do modelling? And if you did modelling are we allowed to—as a committee—see the results of the modelling?

**Mr CHAIR:** We have heard today, our legislation is more like Queensland, and Western Australia are a bit different.

**Mr DA ROCHA:** Western Australia, South Australia and Queensland have a fixed percentage stated within their legislation. Unlike the Territory, where the Minister of the day sets how much. We would not have that opportunity. I think it is 2.5% …

**Ms MOLONEY:** Queensland is 1.5% of the five-year average UV, Western Australia is 2% and South Australia is 2.7%. Currently in the NT, ours is 0. 0.616%.

**Mr CHAIR:** So you would still have that fluctuation.

**Mr HIGGINS:** That is unimproved value, isn't it?

**Ms MOLONEY:** Based on the unimproved capital value.

**Mr HIGGINS:** So we would be the only ones using carrying capacity?

**Ms MOLONEY:** Yes. Ours is based on a New Zealand model that has recently been adopted over there, based on carrying capacity. The Valuer-General has recommended that is working very well, so that was a model we used when developing this.

**Mr HIGGINS:** When we talk about those big variations in 2009, we heard from Heron Todd today that in 2009 everything was out of whack. They have had a large project to bring them back into whack, so to speak. Those were his words, I think. I have not seen Hansard but it was along those lines.

So the argument of changing from what was there in 2009 to the estimated carrying capacity does not really apply any more if he is saying they were out of whack then and they are now back in whack.

But it still does not answer the—and it probably explains why he said Australia is different to New Zealand, so he gave me that answer—but it does not address the question that Mr Wood asked, which is, would that be fair? When someone is right next to the highway and can get their cattle to the market by driving 10 kilometres on a bitumen road as opposed to someone that is going to drive 500 kilometres on a dirt road. They have exactly the same carrying capacities, and pay the same lease. His argument was, that is what your unimproved capital value would pick up, as opposed to carrying capacity.

Has that been addressed in any of the considerations? I know Cabinet gave you four options to look at, and one of them was that, but was that one of the considerations taken into account? That is why Mr Wood has asked whether there is access to any of the modelling that was done.

**Mr DA ROCHA:** I have Minutes, but that is the extent of information I have. The only thing I can say is with the 2015 carrying capacity evaluations undertaken, we only had two questions back from lessees. It seems it is widely more accepted. That is as much as I can comment on that.

**Mr WOODS:** Except the problem is, that is not a formula that I can guide my decision on. I need something that is, for government and industry, the fairest and will achieve the outcomes, one of which is to reduce fluctuation in payments, and to allow government to receive income. But at the same time be fair to pastoralists who live in different parts of the Territory; on larger estates, on poorer country, different distances from the main roads, and somehow that is still taken into account.

**Mr CHAIR:** I think many jurisdictions would be struggling with the same issues.

**Mr WOODS:** That is what the UCV does. I would like to ask Ms Townsend if there is any modelling that we could see.

**Ms MOLONEY:** In 2015, when the ECCs were undertaken through wide consultation, Heron Todd White put together a package the Valuer-General sent to all lessees, explaining the methodology and modelling that was used to calculate those ECCs, and spoke to every individual lessee about that.

That is what Luis is saying. We only had two people who questioned their valuation or their ECC. Also, the current president of the NTCA and members from Central Australia and the Sturt Plateau were representatives on the working group. They were representing industry stakeholders and we use that as a guide that it was—and we refer to them as to whether it would be a widely accepted model to use, you look to them for guidance in that regard. Following the correspondence that was sent out in 2015, we have not received anything back saying they disagree or do not like it or following that methodology that was used.

Mr Wood, I will seek some advice on whether there is any issue with providing you with the modelling. It is not something I would be comfortable to just table…

**Mr WOOD:** We can do that. It is confidential anyway.

**Ms TOWNSEND:** Tania is saying there has been wide acceptance of that model in the sense that lessees thought it was fair, because they did not object

**Mr WOOD:** What did Treasury think? Will they win or lose?

**Ms TOWNSEND:** They would like their money.

**Mr WOOD:** I know that. In 30 days, according to (inaudible) .

**Mr COLLINS**: About what was said with these amendments effectively being administrative changes to the 2014 amendments which were in line with the 1998 *Native Title Amendment Act*, we heard from the Northern Land Council and they acknowledged those 2014 amendments and the connection with the 1998 act certainly causes me concern given the ideology behind that 1998 act. They have asked that we look at incorporating a right to negotiate in the act. That strikes me as a reasonable proposal, why would it not be?

**Ms TOWNSEND:** It is really evident that the concerns from the land council that we underestimated are really around how subleases will encourage non-pastoral use and where native title holders might be in that picture. As the CLC spoke to the committee earlier, I was able to hear some of that. We have had some discussions with them around that and the option around their desire that the *Pastoral Land Act* refers to a right to negotiate.

The way our act is constructed is the provisions in the *Native Title Act* set how we negotiate with those native title holders. The question that needs to be put to government and further exploring is, does the Northern Territory have power to have provisions in its act that exceed what is in the *Native Title Act* and would they be…

**Mr COLLINS**: I do not think it is a matter of exceeding the *Native Title Act*, it is a standalone provision in the Northern Territory. I accept what the Northern Land Council's legal representative said about that. As I understand, there is nothing precluding the Northern Territory providing provisions that require the right to negotiate in that sublease process.

**Ms TOWNSEND:** I think that would be something we would need to have a much more considered look at. There are two issues; is it legally possible and is it policy government wants to pursue?

**Mr CHAIR:** Thank you, Jo. I just want to welcome the Member for Katherine and acknowledge your presence, thank you for coming.

**Mr WOOD:** While you are thinking, Mr Chair, I just want to ask, did you look at a so called production tax that was mentioned before?

**Mr CHAIR:** Have you heard of production tax?

**Mr WOOD:** A levy per cow sold from a property.

**Mr DA ROCHA:** I think Meat & Livestock Australia already…

**Ms MOLONEY:** The Commonwealth government collects a levy on all cattle sales, is that what you mean?

**Mr WOOD:** It was similar through the MLA they would collect for every cow that went across the sale yards the government would collect a fee which would be basically money for where the cattle came from.

**Ms MOLONEY:** Yes and when a lease is sold they also have to pay a levy through the Commonwealth government on the livestock that has been sold.

**Mr WOOD:** Then there would not be any requirement for you to have to worry about UCVs or stock capacity.

**Mr CHAIR:** The proposed repeal of section 54 will remove the application of the valuation of land act and its procedures for objections to valuations. What procedures for objecting to estimates of carrying capacity would exist under the bill?

**Ms MOLONEY:** The department is the best placed body to handle setting the ECCs and distributing the notices for the rent and setting those ECC amounts because we have the capacity and the established procedures in place to handle any objections. We can do that through sending out the notice and giving someone two or three weeks or whatever to respond if they have an objection and then we can adjust it in consultation. If they want to take if further we have the established NTCAT, civil administrative tribunal, already set up within our legislation that we can refer it to and go through that way.

**Mr CHAIR:** Proposed section 54(2) states the agency may conduct a review of the estimated carrying capacity at any time but not more than 10 years after the previous determination. Does this mean that if the agency does not make a new determination within 10 years of the previous determination then no determination can be made?

**Mr° DA ROCHA:** As part of the consultation process this is one of the ones that we are looking to amend and propose to government, move away from the cycle and to adjust it to say at the department's discretion or when the department feels at any time and essence. That has come out as a result of discussions and submitters.

**Mr HIGGINS:** If the department can ask it can the land owner ask for it—it would only seem fair.

**Ms TOWNSEND:** That would be one of the reasons you would want to get away from—your 10 years is up or your five years is up—if there was a significant level of advocacy from the community or certain stakeholder groups you had the option as government to initiate a review or to respond to certain kinds of events. It would seem more efficient for us to be able to say we can initiate the review, but we would certainly be taking advice and suggestions from others in that.

**Mr HIGGINS:** I would hate to see that the department could initiate a review whenever it wants to do one without having the same power with the person that has the lease. That would be my strong suggestion.

**Ms UIBO:** I am interested with the Pastoral Land Board with the membership—how is the makeup determined for the membership?

**Ms MOLONEY:** When someone leaves the Pastoral Land Board the minister usually puts the notice in the paper publicly advertises for expressions of interest and then assesses those. The minister tries to appoint someone to the board from a vast representation across the Territory so we have all land types and climatic condition areas from different representatives. For example, we have someone on the WA branch, Steve Craig from Mistake Creek from the Aboriginal land trust there. We have someone in Central Australia, Sturt Plateau previously from the gulf so they have a really underlying knowledge of all the different land types when they are making assessments on non-pastoral use and clearing. We look at their qualifications, their history, and their land management capabilities.

Several members have—one of our members, not just the Rangeland scientists—we generally have a rangeland scientist on the board as well to provide that proponent but also one or two of our other members have associated science degrees in that regard and can bring that knowledge to the board as well when assessing applications.

**Ms UIBO:** How long are the appointments for the membership? Are they for three years?

**Ms MOLONEY:** They are for three years, but the act specifies out of the five currently allowed, two must be pastoralists. We are looking to increase that so we can have a more diverse representation on the board. Five is a bit limiting because we have to have a quorum of four. Due to the vast spread of members, if we have trouble with technology, they have to rush off to birth a cow or fix a bore, or someone is sick, then we cannot meet our quorum. So, we are looking to increase that membership, then we can certainly look at having representation from other groups that can bring their expertise and knowledge to the table.

**Ms UIBO:** Thank you. We heard two submissions today regarding diversifying the expertise that is on the board. Increasing the numbers, obviously, would allow for that.

**Ms MOLONEY:** Yes, we try to have a woman as well to balance it. But we definitely take that on board and thoroughly support it.

**Ms UIBO:** Thank you.

**Ms TOWNSEND:** I would like to make a comment about the view that the Pastoral Land Board acts in isolation. Not only is it governed by the legislation, but it has the Department of Environment and Natural Resources that provides it information and support. It therefore has very good access to scientific expertise through the department.

**Mr CHAIR:** Right. Thank you.

The Arid Lands Environment Centre has recommended reducing the review period for estimated carrying capacity valuation from 10 years to five years, but other submissions have said there should be no review. What is the basis for the 10-year review period?

**Mr DA ROCHA:** That is …

**Mr HIGGINS:** You answered that by saying they are at the department's discretion …

**Mr DA ROCHA:** We are not setting a time period for it.

**Mr HIGGINS:** … and I said maybe the land lessees.

**Mr CHAIR:** A number of submissions were received by the committee which recommended changes to Regulation 31 of the Pastoral Land Regulations to include a number of environmental conservation activities and farm-based tourism to occur on pastoral land. What was the basis for the inclusion of the forestry, agricultural, horticultural and aquaculture in Regulation 31?

**Ms TOWNSEND:** They are the primary production uses listed in the *Native Title Act* and also the allowable uses for non-pastoral use in the *Pastoral Land Act*. So, it is aligning the three processes together.

**Mr CHAIR:** Was consideration given to including environmental conservation activities and farm-based tourism?

**Ms TOWNSEND:** Farm-based tourism is already provided for. Some of the discussion that has been raised about environmental and carbon strategies are examples where there is some unity of views about that being a very good idea. Again, it is a question of whether it would be an allowable use in the *Pastoral Land Act* and how we would navigate that. It is a policy issue worth considering, but it requires some careful thought.

**Mr CHAIR:** Under proposed section 30B, a change in a person's ability to control 15% of the votes of a body corporate lessee is a lease transaction. Why is the threshold set at 15%? We heard differing views today of what it should be set at.

**Ms MOLONEY:** There is a current loophole where, if a company is purchasing another company, they do not need to get the minister's consent to transfer because there is no change of name on the title at the Lands Title Office. To close that loophole we have looked at amending the act. We set the 15% because in a small organisation, a person may have a controlling interest if the person holds 50% or more of the total shares. However, this is aimed at public companies where there may be hundreds of thousands of shareholders and the controlling interest will be a much smaller portion of those shares. The 15% was suggested because it is consistent with other NT legislation such as the *Gaming Machine Act* and the *Liquor Act*. That is where we drew that knowledge of that figure from.

**Mr WOOD:** Raising cows is always a gamble.

**Ms MOLONEY:** And he might need to drink as well to get through.

**Mr CHAIR:** The bill makes it an offence to enter a lease transaction without the Minister's consent. But it does not explicitly state that consent is required to enter a lease transaction. So what is the effect of a lease transaction, purportedly made without consent?

**Ms MOLONEY:** Sorry, could you repeat the question?

**Mr CHAIR:** The bill makes it an offence to enter a lease transaction without the Minister's consent, but it does not explicitly state that consent is required to enter a lease transaction. So what is the effect of a lease transaction, made without consent?

**Ms MOLONEY:** The legal basis for that drafting is on advice from parliamentary counsel, however it is basically saying that if you do not obtain the Minister's consent to enter into a lease transaction, you will then be liable. A lease transaction is selling a lease and transferring it to another entity without the Minister's consent.

It is a complex thing to write. If you do sell it without consent, then you are liable and you can be penalised.

**Mr CHAIR:** The sale is not affected?

**Ms MOLONEY:** Yes, the Lands Titles Office requires a letter of consent from the Minister to register the new ownership. If they do not have that letter from us, they will not go through with the transaction and settlement cannot occur.

However, at the moment, if you are buying the whole company, you do not need to go to the title, because you are assuming that company as part of your company, and the name stays the same. So it is closing that loophole, and that wording is stating that. I am assured it is the right way to say it by the drafters.

**Mr CHAIR:** Thank you. That is all of my questions. Are there any others?

**Mr WOOD:** I have a question about the pastoral lease rent factor. Are you going to basically divide the Territory into four sections, and then work out a pastoral lease rent factor which will mean one cow in one area might be cheaper than a cow in another area, or less value?

**Ms MOLONEY:** There are currently 12 pastoral districts in the Northern Territory, that are gazetted, and the current legislation allows for a percentage rate to be declared in each individual district, or overall. In the last 25 years, the percentage rate has always applied to the whole Territory.

**Mr WOOD:** What does a percentage rate mean?

**Ms MOLONEY:** Currently, we apply a percentage rate to the unimproved capital value of the land to determine our rent. We are really just changing that calculating factor of ECCs times the dollar rate, or the pastoral lease rent factor.

At the moment you can apply a different percentage rate per district. If, for example, one area is subject to drought or the live trade crashes, you can give them a different percentage rate to the other areas, effectively. We have just followed that legislation through to keep it where a different dollar rate can be applied per district, if need be.

**Mr WOOD:** So a different value would be given to a cow in one district?

**Ms MOLONEY:** It allows for that. We have never done that, but it allows for it.

It is just the same as a percentage rate per UCV, in the past.

**Ms TOWNSEND:** That provision exists now. It is not being applied. The likely scenario when that would be applied is if there was a significant natural disaster in one district, or a serious drought and the government wanted to make some sort of concession to that industry, for that purpose. As Tania said, in the history of the *Pastoral Land Act*, it has only ever occurred once, and overall but it could apply separately to each of the 16 districts by law.

**Mr WOOD:** It could give you a way of overcoming the unfairness. So the Mistake Creek Station may have a pastoral lease factor which is lower, maybe, than someone on the Barkly highway. Could it be applied that way?

**Ms TOWNSEND:** It could, except the overall intention of government is to have stability, not create those differences in the market. The only time that we would ever recommend a difference would be if the industry was significantly hurting—or there were some strong call for them to be preferenced that way.

**Ms MOLONEY:** If disease wiped out cattle in one district or something, and then we might need to say, 'All right, you can have a lower percentage this year—or rate, dollar value—then the rest of them because you have no cattle'.

**Mr WOOD:** Well it is pretty hard to charge someone for no cattle. They still have the capacity yes.

**Ms TOWNSEND:** They still own the land, lease the land. Yes.

**Mr WOOD:** Yes that is right.

**Ms TOWNSEND:** And it would be highly unlikely that that would be not discussed and promoted and presented as such.

**Mr CHAIR:** Well we might—Ms Uibo has another question?

**Ms UIBO:** Yes, thank you. In regard to native title holders, what processes are currently in place for the consultation with native title holders about pastoral leases and also about non-pastoral permits?

**Ms MOLONEY:** Currently we follow section 24GB of the *Native Title Act* when we receive a non-pastoral use application. For any non-pastoral application for horticulture, agriculture, forestry or aquaculture, we follow the processes to notify them of that.

We do a search through the Native Title Tribunal to identify who the registered native title holders are. We then have a notification document that we prepare and send off to the native title holders, usually through the relevant land council. Although I know some are not represented by the Land Council so one way or another they get it. And then that is notifying them with a copy of the application of the proposal.

Through the recent months and years we have identified that it would be more useful to extend the timeframe that we give the Land Councils to respond because we understand they have to go out and liaise with them. We have increased that from the four weeks we were previously giving, to now to the 60 to 90 days, taking that on board.

And under 24GB of the *Native Title Act* we do not have to notify for tourism non-pastoral use purposes, but we have taken on-board that just because it says we do not have to, that that is not fair. We now also send a letter advising that we have received one and that out of courtesy.

Out of the 17 non-pastoral uses that have issued since 2014, we have had only a couple responses to those notifications. We always take those on board and submit them to the Pastoral Land Board for their consideration when they are assessing the application.

**Ms UIBO:** Thank you, and just a follow up as well. What processes will be used to consult with native title holders about the non-pastoral subleases that we were talking about in the bill amendment? If any.

**Ms MOLONEY:** Subleases are a commercial arrangement between the lessee and a third party, so we do not get involved with what that entails and what that agreement is. It is a contract between them that we do not have any say in the format or what goes on. It is really a commercial in confidence. We do not advertise it on the Internet publicly. We do not make it available.

At the moment the subleases are only for pastoral or a prescribed purpose which is—we do not circulate it for government comment. If they are applying a sublease for one of those primary production activities under the Native Title Act, they will have to have a non-pastoral use first. That will all be—consultation will happen through that process before they can enter into the sublease. Any issues that may arise will be identified through that process before the minister considers the sublease.

**Ms UIBO:** Is it still the process—like right now stands currently—that it is only a notification process and that is not actually, as we were talking about, the right to negotiate earlier from the Member for Fong Lim.

**Ms MOLONEY:** Yes, at the moment, in accordance—that is the current legislation that we are working to at the moment, so that is the process that we take.

**Ms UIBO:** Okay, thank you.

**Mr WOOD:** Can I just follow up on that?

**Mr CHAIR:** Yes.

**Mr WOOD:** How does the public get involved? Say someone wanted to put 50 hectares of bananas in. Now, in more zoned areas you can put your comments in and you will get comments from all the departments. If the public had a concern about a certain application, where do they get into the discussion?

**Ms MOLONEY:** You would put an ad in the paper.

**Mr WOOD:** Yes that is right. Yes.

**Ms MOLONEY:** And then it goes on the Internet as well.

**Mr WOOD:** So what is the public input? I sit at a DCA meeting, and I have a public meeting and we can discuss the issue. Is there a process like that?

**Mr DA ROCHA:** It goes to the Pastoral Land Board which mirrors DCA so those submissions will be provided to the Pastoral Land Board to consider as part of their decision-making process.

**Mr WOOD:** The DCA allows you to go to a meeting and is required to ask anyone from Telstra to government departments and the public has an opportunity not only to put a submission but sit and listen to the discussion in a public forum, so there is not allowance for that.

**Ms TOWNSEND:** I suppose the only comment is if it is a proposal of significance, the usual process of land clearing or referral to the NT EPA would apply but there is currently no open forum process for the Pastoral Land Board's decision-making.

**Mr WOOD:** As I said before, I would prefer some of these applications to go through a planning process which is up for review, but I think it allows more community input as well as Aboriginal and pastoral input. It also takes into consideration broader things like effect on infrastructure, roads and what other things might be required for that development.

**Ms TOWNSEND:** The more significant ones will certainly be referred to the NT EPA and their process of consultation would apply. Tania has just pointed out that the *Pastoral Land Act* states the meeting of the board at which the application is considered may be open to the public so there is no impediment in law to be able to do that, it just has not been practised.

**Mr CHAIR:** Okay. We might wrap it up. Are there any other things we should be aware of that you want to let us know about? You have done 10 consultations with some of the submissions and there are two you will follow up with?

**Ms TOWNSEND:** Everyone has been offered a briefing who wanted one. As I said, the process has identified a number of areas where there was a misunderstanding about the act as it is constructed but there was also some of these broader matters raised, some we can take on board and some need to be considered more widely.

Underpinning all of this is these are some changes to the current act. There is an ongoing question around the *Pastoral Land Act* which is from 1992; there was an interest in having a more broad scale discussion about the legislation.

**Mr CHAIR:** On behalf of the panel and I, thank you Jo, Tania and Luis for coming in and all your work in the hearing.

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The committee concluded.

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