NORTHERN LAND COUNCIL
Our Land, Our Sea, Our Life

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The Chairperson
Economic Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
Parliament House
DARWIN NT 0800

Via email: EPSC@nt.gov.au

Dear Sir/Madam

PASTORAL LAND LEGISLATION AMENDMENT BILL 2017

I am writing on behalf of the Northern Land Council (NLC) to express our concerns in relation to this Bill. The NLC is the native title representative body recognised under the *Native Title Act 1993* (Cth) in relation to the top end of the Northern Territory (NT) including the Tiwi Islands, Groote Eylandt and the adjacent seas.

I note that the Terms of Reference of the Committee includes whether the Bill has sufficient regard to the rights of individuals and whether it has sufficient regard to Aboriginal tradition. Whilst it is of concern that the group or communal rights of traditional owners or native title holders are not seemingly included within the scope of the human rights being analysed by the Committee it is clear that the native title rights of Aboriginal individuals will be adversely affected by this Bill if it is passed by the Legislative Assembly in its current form.

There are currently 62 determinations of native title on 63 pastoral leases in the NLC region. This does not include registered native title claims in relation to the balance of the NLC region where pastoral leases exist where determinations of native title are progressively being recognised by the Federal Court of Australia.

Grant of subleases for non-pastoral purposes

The major concern of the NLC is that the Bill enables the grant of subleases for non-pastoral purposes including a range of primary production activities on pastoral leases.

These provisions, as did the earlier amendments introduced by the former Country Liberal government in 2013 (non pastoral use permits) implement in the Northern Territory the Howard Coalition Government's 10 Point Plan in response to the *Wik* High Court decision which at the time the Deputy Prime Minister Hon Tim Fischer described as providing for 'bucket loads of extinguishment' in relation to native title.

An important part of the changes to the NTA which were eventually implemented through the *Native Title Amendment Act 1998* (NTAA 98) were the provisions that provided for a range of Primary Production activities to be authorised on Pastoral Leases without the Right to Negotiate (RTN) provisions of the NTA applying. The non-extinguishment principle does apply but the native title is effectively suspended without upfront compensation for the term of the primary production activity. The inclusion of the RTN was a significant outcome of the negotiations by Aboriginal leaders in the original NTA with the Keating Government in 1993.

These amendments mean that registered native title claimants and native title holders only have minor procedural rights to be notified of the proposal, an opportunity to comment and to seek compensation for the affect upon their native title (through a Court case for compensation) once the activity has taken place. On current trends a compensation claim will take years to finalise. Sacred sites legislation still applies to these developments.

In contrast the RTN allows native title holders to be at the negotiating table and to be actively involved in the approvals for the development and provides an opportunity to be involved in and benefit from the economic development proposed. This often leads to a section 31 (NTA) agreement or an Indigenous Land Use Agreement (ILUA).

In summary the effect of the previous introduction of the non-pastoral use permits and now potentially to provide for sub-leases for intensive uses of the land is of deep concern as it clearly will (at a practical level) preclude the carrying out of native title rights and interests. With the removal of the RTN provisions of the NTA to apply to the approval of these developments there is no requirement and effective opportunity for native title holders to be involved in the economic activity that affects their interests.

It needs to be remembered that pastoral lessees do not own the land and do not have a right of exclusive possession. Native title co-exists with a pastoral lease on the same area and the rights of native title holders require equal respect along with the pastoral lessee.

As mentioned the mostly primary production activities that may now be facilitated through the grant of a registrable sub-lease are predominantly intensive land uses that preclude the carrying out of native title rights and interests in those areas.

Whilst at one level there is no objection to diversification on pastoral leases everything else being equal in terms of environmental, social and cultural impacts it is the effective exclusion of native title holders from the proposed development because of the impact of the implementation of the NTAA 98 in the NT that is of concern.

The NLC is proposing that a legal right be recognised in the *Pastoral Land Act* that will enable the co-existing native title holders on pastoral leases a substantive say and involvement in the grant of any non-pastoral use permit or sub- lease so that they can also benefit from new economic activities on their traditional lands.

If the *Developing the North* agenda is to be inclusive and equitable then it must also respectfully and meaningfully involve the many thousands of Aboriginal people in the NT that hold native title where pastoral leases also exist. Such a modern will also be consistent with the NT's approach to a discussion about a Treaty in the NT.

I am available to further expand upon this submission if the Committee wishes to obtain further information.

Yours sincerely

Joe Morrison
CHIEF EXECUTIVE OFFICER