



NORTHERN LAND COUNCIL

Our Land, Our Sea, Our Life

Address all correspondence to:

Chief Executive Officer

GPO Box 1222 Darwin NT 0801

45 Mitchell Street Darwin NT 0800

P: 08 8920 5100 • F: 08 8945 2633

Freecall: 1800 645 299

www.nlc.org.au

ABN 56 327 515 336

19 March 2018

Ms Julia Knight
Secretary
Social Policy Scrutiny Committee
GPO Box 3721
DARWIN NT 0801

Via email: SPSC@nt.gov.au

Dear Ms Knight

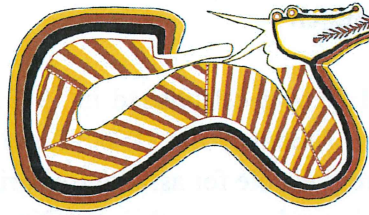
The Northern Land Council (NLC) welcomes the opportunity to provide a submission to the Social Policy Scrutiny Committee and is hopeful that the advice provided will be seriously considered in the formulation of the Committee's report to the Legislative Assembly in respect of the *Animal Protection Bill 2018*.

If you have any queries regarding the content of this submission, please contact Kristen Lynch of the NLC on (08) 8920 5111 or at kristen.lynch@nlc.org.au

Yours sincerely

Joe Morrison
CHIEF EXECUTIVE OFFICER

Katherine	Jabiru	Nhulunbuy	Borroloola	Ngukurr	Tennant Creek	Timber Creek	Wadeye
P.O. Box 396 Katherine NT 0851 P: (08) 8971 9899 F: (08) 8972 2190	P.O. Box 18 Jabiru NT 0886 P: (08) 8938 3000 F: (08) 8979 2650	P.O. Box 820 Nhulunbuy NT 0881 P: (08) 8986 8500 F: (08) 8987 1334	P.O. Box 453 Borroloola NT 0854 P: (08) 8975 8848 F: (08) 8975 8745	P.M.B. 85 via Katherine NT 0851 P: (08) 8975 4755 F: (08) 8975 4601	P.O. Box 55 Tennant Creek NT 0861 P: (08) 8962 1884 F: (08) 8962 1636	43 Wilson St Timber Creek NT 0852 P: (08) 8975 0789 F: (08) 8975 0664	Lot 788 Kanarlda St Wadeye NT 0822 P: 0439 830 435



**NORTHERN
LAND COUNCIL**

Northern Land Council

Submission to the Northern Territory Social Policy Scrutiny Committee:

Animal Protection Bill 2018

19 March 2018

1. About the Northern Land Council

The Northern Land Council (NLC) was established in 1973. Following the enactment of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Land Rights Act)*, the NLC became an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands and seas.

The Land Rights Act combines concepts of traditional Aboriginal law and Australian property law and sets out the functions and responsibilities of the land councils. Section 23 of the Land Rights Act sets out the NLC's core functions, which gives it the responsibility to:

- identify relevant Traditional Owners and affected people;
- ascertain and express the wishes and opinions of Aboriginal people about the management of, and legislation in relation to, their land and waters;
- consult with traditional Aboriginal owners and other Aboriginal people affected by proposals;
- negotiate on behalf of traditional Aboriginal owners with parties interested in using Aboriginal land or land the subject of a land claim;
- assist Aboriginal people carry out commercial activities; obtain Traditional Owners' informed consent, as a group;
- assist in the protection of sacred sites; and
- direct a Aboriginal Land Trust to enter into any agreement or take any action concerning Aboriginal land.

In 1994, the NLC became a Native Title Representative Body under the *Native Title Act 1993 (Cth) (Native Title Act)*, whose role and functions are set out under Part 11, Division 3 of the *Native Title Act*.

In this capacity, the NLC also represents the Aboriginal people of the Tiwi Islands and Groote Eylandt.

Within its jurisdiction, the NLC assists Traditional Owners by providing services in its key output areas of land, sea and water management, land acquisition, mineral and petroleum, community development, Aboriginal land trust administration, native title services, advocacy, information and policy advice. Relevant to this submission, is a responsibility to protect the traditional rights and interests of Traditional Owners and other people with interests over the area of the NLC, which is constituted by more than 210,000 square kilometres of the land mass of the Northern Territory, and over 85% of the coastline.

NLC's strategic vision is:

To have the land and sea rights of Traditional Owners and affected Aboriginal people in the Top End of the Northern Territory recognised and to ensure that Aboriginal people benefit socially, culturally and economically from the secure possession of their land, waters and seas.¹

¹ Northern Land Council Annual Report 2016/17, p i.

2. About this submission

This is a submission by the NLC, which represents more than 36,000 Aboriginal people in the Northern Territory (NT). It is critical that Aboriginal people are actively engaged and participate in developing legislation which governs activity on their land, as significant landowners and managers in the NT and we welcome the opportunity to provide comment on the Animal Protection Bill 2018.

On behalf of its constituents, the NLC asserts that Aboriginal people are the First Nations People and principles of free, prior and informed consent, self-determination and an equitable share in the future growth in the NT economy will underpin the future relationship with governments.

Substantive property and access rights and use of resources in accordance with traditional law and custom, including the exercise of traditional hunting methods, must be in accordance with the Land Rights Act and the Native Title Act. These rights include the recognition of traditional ecological knowledge, spiritual and customary rights which are further protected by heritage and environmental law provisions and international conventions².

We urge the Northern Territory Government (NTG) to ensure that NT policies and legislative structures and frameworks need to be consistent with those recognised legal and moral rights and do not conflict with the rights of traditional Aboriginal owners and native title holders granted pursuant to the Land Rights Act and Native Title Act.

This submission raises particular concern in respect of provisions of the *Animal Protection Bill 2018 (the Bill)* which have the potential to lead to the prosecution of Traditional Owners and native title holders carrying out hunting in accordance with traditional law and custom, and as recognised pursuant to the Native Title Act and the Land Rights Act.³

For the purposes of this submission, the term *Traditional Owner* will be used as a term which includes traditional Aboriginal owners (as defined in the Land Rights Act), native title holders (as defined in the Native Title Act) and those with a traditional interest in the lands and waters encompassing the NLC's region.

3. The importance of hunting in the NLC's region

Hunting has been recognised as a traditional right of Aboriginal and Torres Strait Islanders by both the Australian judiciary and legislature. For many of the NLC's constituents, hunting is an

² United Nations Declaration on the Rights of Indigenous People (UNDRIP); *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

³ *Yanner v Eaton* (1999) 201 CLR 351; *Native Title Act 1993* (Cth)

essential practice which provides a key food source and expression of culture. Aboriginal people have been recognised as being most at risk of food insecurity, more so than any other subgroup in Australia.⁴ In 2012-2013, the Australian Bureau of Statistics' *Australian Aboriginal and Torres Strait Islander Health Survey* found that 22% of Aboriginal and Torres Strait Islander people were living in a household which, during the previous 12 months, had run out of food and had not been able to purchase more. In remote areas, this number rose to 31%.⁵ In remote areas within the NLC's region, Aboriginal people must contend with price and unpredictable quality which is freighted in for sale at community stores.⁶ This is a reality for many of the NLC's constituents.

However, the geographic location and isolation of remote communities can mean that traditional food sources are plentiful and readily available to the local population through the use of traditional hunting methods.⁷ Many people regularly hunt animals and collect plant foods to supplement the food purchased. Where evidence is available, the dietary profile of those remote communities where more traditional foods are consumed tends to be better than those where less traditional food is consumed.⁸ Additionally, the use of traditional foods can lead to benefits in respect of the wider social determinants of health, and can be the foundations of improved education, employment and commercial opportunities.⁹

Hunting is not only a means of obtaining a food source, but an important expression of culture and element of spirituality for many of the NLC's constituents. The spiritual element of hunting is one of the major contributors to the continuation of the practice, as:

...hunting [allows Indigenous peoples] to express profound environmental knowledge stretching back over many generations, and continually reinforces their beliefs in the spiritual value of such knowledge; it is also an important medium of education, whereby both spiritual and ecological knowledge is handed on to succeeding generations.¹⁰

The relationship between human and animal is steeped in an inter-connectedness of spirit: Silas Roberts, former Chairman of the NLC in 1975 said, "Our connection to all things natural is spiritual".¹¹ Creation stories, which in Australia vary from region to region, contain the same basic elements, including that creation beings are responsible for the design of the land and

⁴ Bussey C (2013) Food security and traditional foods in remote Aboriginal communities: A review of the literature, *Australian Indigenous Health Bulletin* 13 (2) at p 2.

⁵ Australian Bureau of Statistics (2015) *Australian Aboriginal and Torres Strait Islander Health Survey: Nutrition Results – Food and Nutrients 2012-2013* (ABS cat. No. 4727.0.55.005) Canberra: Australian Bureau of Statistics.

⁶ Bussey at p 2.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Young, E *Caring for Country: Aborigines and Land Management* (Australian National Parks and Wildlife Service, Canberra, 2001), p 111.

¹¹ Silas Roberts cited in Grieves, V. 2009, *Aboriginal Spirituality: Aboriginal Philosophy, The Basis of Aboriginal Social and Emotional Wellbeing*, Discussion Paper No. 9, Cooperative Research Centre for Aboriginal Health, Darwin at p 12.

“gave rise to living forms, the animal species, all manner of plants, the landforms, watercourses (which, though inanimate, are understood to have their own spirit or being) and, of course, people”.¹² These creator spirits taught people how they were related to the natural world, and importantly, how these relationships are ones of “inter-dependence and inter-responsibility”.¹³ This relationship of “mutual spirit being” is often referred to as totemism.¹⁴ In the system of totemism, people are considered to be of the same spirit as the species, landform or plant life as their totem. The totemic relationship requires a person to learn how to take responsibility for that species. Tasmanian Aboriginal activist Puralia Jim Everett has explained that within this system, people:

...must remain accountable to the ecological world, which accepts Indigenous intrusion and use of that ecology only on sound practices of interaction with the spirit of the land, manifested in strict rules of respect and tradition.¹⁵

Accordingly, totemism dictates how humans should carry out the practice of hunting. Restraints on hunting are just as important as the exercise of hunting, and this system sets out places where people do not hunt or fish, certain times when some species are favoured over others, or species which may not be killed by certain people. Responsibilities are based on totemic relationships: for example, those whose totem is the kangaroo must not kill or eat kangaroo, and may also forbid others from doing the same. These laws are vital for the “management for long-term productivity, control of sanctuaries, protection of permanent waters, refugia, breeding sites, and of certain plant communities”.¹⁶ This is a relationship which is life-sustaining and sustainable.

It is evident that relationship with animals is a vital element of the worldview of many of the NLC’s constituents, and any changes or barriers to the enjoyment of the spiritual relationship between human and animal has the potential to be detrimental to the spiritual life of many. The NLC submits that any impediments to Traditional Owners’ right to hunt have the potential to be damaging to the physical and spiritual well-being of the NLC’s constituents.

¹² Grieves at p 9.

¹³ Grieves at p 8.

¹⁴ Ibid.

¹⁵ Everett, J. 1994, ‘Foreword’, in A. P. Elkin (ed.), *Aboriginal Men of High Degree: Initiation and Sorcery in the World’s Oldest Tradition* (2nd edn), University of Queensland Press, Brisbane, p ix, cited in Grieves, above n 11 at p 13.

¹⁶ Bird Rose, D. ‘Common property regimes in Aboriginal Australia: totemism revisited’ in *The Governance of Common Property in the Pacific Region*, ANU Press, Canberra 2013 at p 137.

4 **The Animal Protection Bill 2018**

The NLC has legislative responsibilities to express the views of and advocate for Aboriginal peoples' rights to control and manage access to land and waters, protect sacred sites, and to exercise traditional and cultural practices. It is imperative that the Bill give legal certainty to the rights of its constituents to exercise of traditional and cultural practices through hunting and fishing in accordance with tradition, whilst ensuring the humane treatment of animals and to allow for the prevention of cruelty to animals.

As stated above, the Bill, in its current form, has the potential to leave Traditional Owners vulnerable to prosecution for the exercise of their traditional rights, specifically hunting. Relevant clauses of the Bill are examined below.

4.1 **Provisions in respect of cruelty to an animal**

The Bill may leave Traditional Owners exercising their traditional rights open to prosecution through the operation of clauses 24 and 25. Clause 24 of the Bill creates the offence of 'cruelty to an animal', punishable by 200 penalty units or 2 years' imprisonment. Specifically, clauses 24(1) and 24(4) create offences which may lead to the prosecution of those undertaking traditional hunting practices.

Clauses 24(1) and 24(4) of the Bill state:

(1) A person commits an offence if:

- (a) the person intentionally causes suffering or harm to an animal or intentionally contributes to its suffering or harm; and
- (b) the suffering or harm is unjustifiable, unnecessary or unreasonable in the circumstances.

And

(4) A person commits an offence if:

- (a) the person intentionally injures or wounds an animal; and
- (b) that conduct is unjustifiable, unnecessary or unreasonable in the circumstances.

Clause 25 uplifts those offences to **aggravated cruelty** where the animal's death is caused, attracting maximum penalties of 500 penalty units or 5 years' imprisonment.

There is a risk that traditional hunting practices could be interpreted as offending either or both of these sections.

Whilst there are defences to prosecution included in the Bill, an offence against the Act which is carried in accordance with cultural or traditional practices is explicitly excluded.¹⁷ This aspect of the Bill will be discussed further below.

Therefore, the NLC submits that the Bill should seek to balance the need to protect animals from cruelty, and the rights of Traditional Owners to hunt. The Bill should be amended to provide a clear defence to clauses 24 and 25 for hunting undertaken in accordance with traditional law and custom.

4.2 Prosecution under the Bill

As stated above, the relevant clauses of the Bill which criminalise activities such as hunting set out criminal penalties, include prison terms of two or five years, as stated above.¹⁸ A consequence of criminalising traditional hunting is the potential impact on the Indigenous incarceration rate in the Northern Territory. It is accepted that the rate of Indigenous incarceration across the nation is extraordinarily higher than that of non-indigenous Australia. The percentage of Northern Territorians in prison identifying as Aboriginal or Torres Strait Islander as at 30 June 2017 was 84%, according to the Australian Bureau of Statistics.¹⁹ Across Australia, Indigenous Australians are incarcerated at a rate 13 times higher than that of non-Indigenous Australians. The enactment of the Bill and the presumed enforcement of clauses 24 and 25 had the potential to worsen the current situation in respect of Indigenous incarceration.

¹⁷ *Animal Protection Bill 2018* cl 110(2).

¹⁸ *Animal Protection Bill 2018* cl 24; 25.

¹⁹ Australian Bureau of Statistics, *Prisoners in Australia (2017)* (ABS cat. No. 4517.0) Canberra: Australian Bureau of Statistics.

5. Relevant legislation, case law and declarations

An examination of relevant legislation, case law, and the United Nations Declaration on the Rights of Indigenous Peoples (**UN Declaration**) shows that the Bill, in its current form, is inconsistent with the existing law as it relates to the right of Aboriginal people to hunt. This has the potential to lead to confusion in respect of the application of the law.

a) *Native Title Act 1993 (Cth)*

Hunting is expressly provided for in the Native Title Act.²⁰ Additionally, s 211 of the Native Title Act allows native title holders to conduct certain activities on lands and waters without the need to obtain a permit, as is required of others. However, s 211 also includes a note that native title holders are subject to 'laws of general application'. In this regard, judicial consideration by the High Court of s 211 has yielded case law which has ultimately protected traditional hunting and fishing from restrictions in general legislation.²¹

The strength of s211 has been established particularly since the High Court's decision in *Yanner v Eaton* (1999) 201 CLR 351, which allowed a native title holder to take juvenile crocodiles without a permit as an exercise of his traditional hunting rights as protected by s211. The Queensland requirement for a licence was held not to apply to native title holders.

In *Karpany v Dietman* [2013] HCA 47, the High Court applied s211 in holding that the South Australian *Fisheries Management Act* did not prohibit the applicants, as native title holders, from gathering or fishing for undersize abalone in the waters concerned, where they did so for the purpose of satisfying their personal, domestic or non-commercial communal needs and in exercise or enjoyment of their native title rights and interests.

The above decisions demonstrate that the purpose and traditional basis of hunting activities are relevant to the application of state or territory law to native title holder's right to hunt. Accordingly, NLC recommends that, for clarity, the Bill be amended to recognise the existing rights of those holding native title pursuant to the Native Title Act.

b) *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*

The Land Rights Act also operates to protect the right to practice traditional hunting within Territory law. Section 73 of the Land Rights Act states:

73 Reciprocal legislation of the Northern Territory

(1) The power of the Legislative Assembly of the Northern Territory under the Northern Territory (Self Government) Act 1978 in relation to the making of laws extends to the making of:

²⁰ *Native Title Act 1993 (Cth)*, s 223.

²¹ *Yanner v Eaton* (1999) 201 CLR 351; *Karpany v Dietman* [2013] HCA 47.

... (c) laws providing for the protection or conservation of, or making other provision with respect to, wildlife in the Northern Territory, including wildlife on Aboriginal land, and, in particular, laws providing for schemes of management of wildlife on Aboriginal land, being schemes that are to be formulated in consultation with the Aboriginals using the land to which the scheme applies, but so that any such laws shall provide for the right of Aboriginals to utilise wildlife resources...

According to s 73, the Bill will only validly make laws for the protection of wildlife where such laws provide for the right of Aboriginal people to utilise wildlife resources.

c) *Parks and Wildlife Commission Act (NT)*

Section 122 of the *Parks and Wildlife Commission Act (NT)* contains a formula similar to that included in section 73 of the Land Rights Act, protecting the right:

...of Aboriginals who have traditionally used an area of land or water [to continue] to use that area in accordance with Aboriginal tradition for hunting, food gathering... and for ceremonial and religious purposes.

d) *Fisheries Act (NT)*

Section 53(1) of the *Fisheries Act (NT)* also contains a provision similar to s 73 of the Land Rights Act, and section 122 of the *Parks and Wildlife Commission Act (NT)*, which states:

Unless and to the extent to which it is expressed to do so but without derogating from any other law in force in the Territory, nothing in a provision of this Act or an instrument of a judicial or administrative character made under it limits the right of Aboriginals who have traditionally used the resources of an area of land or water in a traditional manner from continuing to use those resources in that area in that manner.

The above excerpts illustrate that the Bill, in its proposed form, is inconsistent with existing Commonwealth and Territory legislation. To remedy this inconsistency and to avoid uncertainty, the NLC recommends that an amendment to the Bill should be made to establish that nothing in the Bill affects the rights of Aboriginal people provided for in the above Acts.

e) *United Nations Declaration on the Rights of Indigenous People*

The UN Declaration also speaks to the right of Aboriginal people's right to gain subsistence through traditional activities. Article 20 of the UN Declaration, a non-binding document that Australia has supported in the UN General Assembly, declares that 'Indigenous peoples have the right to maintain and develop their ... economic and social systems, ... to be secure in their means of subsistence and development, and to engage freely in all their traditional and other economic activities.'

Without the addition of an appropriate defence, the Bill is inconsistent with the UN Declaration, as well as existing Commonwealth and Territory legislation.

6. Defences to prosecution

a) Current defence: section 110(2)

The defence to prosecution under the Act is set out in clause 110 of the Bill. Specifically, clause 110(1) sets out a two-part test which states that a defence is made out where the conduct constituting the offence was both:

- (a) Engaged in to alleviate the suffering of an animal; and
- (b) Reasonable in the circumstances.

Further, and of critical concern to the NLC is clause 110(2) of the Bill which states that “acting in accordance with cultural, religious or traditional practices is not a defence to prosecution for an offence under the Act”. This narrow exception effectively leaves all occurrences of traditional hunting vulnerable to prosecution.

The NLC submits that the current defence set out in s 110(2) is insufficient and places its constituents at risk of prosecution for carrying out an activity for which they have a recognised legal right.

The Queensland experience in respect of animal welfare legislation provides an example of a defence which could be adopted in the Northern Territory.

b) Equivalent legislation: *Animal Care and Protection Act 2001 (Qld)*

The legislation governing animal welfare in Queensland is the *Animal Care and Protection Act 2001 (Qld) (ACP Act)*, which is the equivalent of the NT’s current *Animal Welfare Act (NT)*, which the Bill seeks to replace.

The ACP Act contains a provision which was added in 2012 and which provides that “A person does not avoid liability to be prosecuted for an offence under this Act only because the act or omission that constitutes the offence happens in the exercise or enjoyment of native title rights and interests.”²²

However, public pressure led to the addition another new provision was since added to the ACP Act which allows for the exercise of native title rights in certain circumstances: s 41A(2), which is included at Annexure A of this submission. Prior to the formal insertion of s41A(2) into the ACP Act, the Explanatory Note in respect of the amending bill, the *Animal Care and Protection and Other Legislation Amendment Bill 2012*, stated:

²² *Animal Care and Protection Act 2001 (Qld)*, s 8.

The Bill is intended to strike a reasonable balance between the interests of Aboriginal and Torres Strait Islander people in maintaining their traditional and customary practices, and the animal welfare expectations of the broader community. The Bill will regulate, not extinguish or prevent the exercise of traditional and customary hunting rights.²³

Section 41A(2) of the ACP Act states that the killing of an animal undertaken in accordance with native title rights, or “under the authority of another law of the State or the Commonwealth to take the animal to exercise Aboriginal tradition or Island custom,” is permissible if “the act is done in a way that causes the animal as little pain as is reasonable”.²⁴

The ACP Act also provides examples of where an action may not meet this standard, for example “taking flesh from the animal for human consumption before the animal is dead”²⁵ or “doing a thing or omitting to do a thing that causes the animal to die from dehydration or starvation.”²⁶

The NLC submits that the Queensland experience is a case study to be considered, particularly in light of the fact that it is the only other piece of legislation in Australia which contains a specific provisions “relating to the relationship between animal welfare and traditional hunting.”²⁷

c) Recognition of the evolution of the traditional practice of hunting

Any defence to be added to the Bill must recognise the evolving nature of traditional practices. The Australian Law Reform Commission, in its review of the Native Title Act tabled on 4 June 2015 (**Native Title Review**) stated:

Nylon fishing nets may have replaced those made of bush fibre, fencing wire may be converted into hooks for fishing spears, guns may very often replace spears, aluminium dinghies are used instead of dugouts, crowbars as digging sticks and car springs as adzes. Yet wooden digging sticks, traditional fishnets and traps, spears, harpoons and natural products such as bloodwood leaves for poisoning fish are still used.²⁸

Case law has developed which recognises the validity of traditional hunting practices which have evolved to utilise modern tools and technology. There has been recognition by the Australian judiciary that the practice of the rights and interests which existed at sovereignty have adapted, and that the adaptation:

²³ *Animal Care and Protection and Other Legislation Amendment Bill 2012*, Explanatory Notes, p 1.

²⁴ *Animal Care and Protection Act 2001* (Qld), s 41A(2).

²⁵ *Animal Care and Protection Act 2001* (Qld), s 41A(3)(c)

²⁶ *Animal Care and Protection Act 2001* (Qld), s 41A(3)(d)

²⁷ Sowry, Alice ‘Reconciling the Clash: a comparison of the Australian and Canadian legal approaches to burdening Indigenous hunting right’ *Public Interest Law Journal of New Zealand* (2014) PILJNZ 168 at p 171.

²⁸ Recommendation 5-1 <https://www.alrc.gov.au/publications/alrc126>

...so long as the changed and adapted laws and customs continue to sustain the same rights and interests that existed at sovereignty... will remain traditional.²⁹

Further, it was recommended by the Australian Law Reform Commission in its Native Title Review, that s 223(1) of the Native Title Act be amended to make clear that traditional laws and customs, under which native title rights and interests are possessed, may adapt, evolve or otherwise develop.³⁰ For the same reasons, the NLC seeks similar clarity within the Bill, and seeks that the wording of a potential defence refers to ‘activities permitted under traditional law’, and not ‘traditional practices’.

²⁹ *Bodney v Bennell* (2008) 167 FCR 84 at paragraph [74].

³⁰ Recommendation 5-1 <https://www.alrc.gov.au/publications/alrc126>

7. Conclusion

The NLC holds concerns over the current drafting of the *Animal Protection Bill 2018*, particularly in respect of the clauses which have the effect of criminalising hunting, to which many of its constituents hold legal right.

Hunting is an important part of life for many Traditional Owners in the NLC's region, and is often the means of obtaining an important food source, as well as sustaining culture.

The NLC is particularly concerned at the potential of prosecutions under the Act leading to the incarceration of its constituents.

8. Recommendations

The NLC makes the below recommendations to ensure that the rights of Traditional Owners within its region to hunt are not unfairly impeded, and to avoid the risk of prosecution.

The NLC recommends that the Bill be amended to:

1. Provide a defence to any offences under clauses 24 and 25 by way of amending clause 110 by adding a defence which states that: it is a defence to prosecution for an offence against this Act if the conduct constituting the offence, or an element of the offence, was: **permitted under traditional Aboriginal law and custom**; and
2. Include a general clause which states: '**Nothing in this Act affects the rights of Aboriginal people pursuant to the *Parks and Wildlife Commission Act (NT)* and *Fisheries Act (NT)***' in order to avoid uncertainty about the application of this Bill to those Acts, particularly the *Fisheries Act*.

The above will ensure consistency with Australian case law and legislation, will not threaten food security and the continuity of culture, and will not risk worsening the already disproportionate incarceration rate of Aboriginal people in the Northern Territory.

Should you have any further questions regarding our submission, please feel free to contact Kristen Lynch on 08 89205111 or email kristen.lynch@nlc.org.au

ANNEXURE A: *Animal Care and Protection Act 2001 (Qld)*

41A Killing an animal under Aboriginal tradition, Island custom or native title

(1) This section applies for an offence if the act that constitutes the offence—

(a) involves the killing of an animal; and

(b) is done—

(i) in the exercise of native title rights and interests; or

(ii) under the authority of another law of the State or the Commonwealth to take the animal to exercise Aboriginal tradition or Island custom; or

(iii) under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 61.

Example—

hunting and killing an animal for personal consumption

(2) It is an offence exemption for the offence if the act is done in a way that causes the animal as little pain as is reasonable.

(3) For subsection (2), the following acts or omissions are taken not to cause the animal as little pain as is reasonable—

(a) injuring the animal to stop it escaping after it has been caught;

(b) injuring the animal or prolonging its life to attract another animal;

(c) taking flesh from the animal for human consumption before the animal is dead;

(d) doing a thing or omitting to do a thing that causes the animal to die from dehydration or starvation.

(4) In this section—

take, under the authority of another law, includes take, keep or use under the authority of the Nature Conservation Act 1992.