



NORTHERN TERRITORY CATTLEMEN'S ASSOCIATION INC.

Advancing and protecting the interests of cattle producers in the Northern Territory

Member - National Farmers' Federation & Cattle Council of Australia

31 January 2018

By email: AboriginalLandCommissioner@network.pmc.gov.au

Aboriginal Land Commissioner
Office of the Aboriginal Land Commissioner
GPO 9932
Darwin NT 0801
Attn: The Hon John Mansfield AM QC

Dear Commissioner Mansfield

Re: Review of detriment issues - Lower Daly Land Claim No. 68

Thank you for your letter of 5 January 2018 in relation to an invitation to the Northern Territory Cattlemen's Association (**NTCA**) to participate in a review of detriment issues for the Lower Daly Land Claim No. 68 (**Land Claim**), as contained in the Aboriginal Land Commissioner's Report of April 2003 (**Land Claim Report**). While my comments are in the context of this land claim, I am providing comments applicable to the detriment that accrues to all pastoralists whose land abuts land claimed under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**Land Rights Act**).

Status

NTCA is the peak primary industry body in the Northern Territory, representing over 90% of the Territory's pastoral industry, from small family pastoral holdings and indigenous enterprises to large corporate entities, and includes Litchfield Station, which is adjacent to the Land Claim area on the east bank of the Daly River. Pastoralists have stewardship of over 700,000 km² of land in the Northern Territory, and cattle contribute over \$1 billion annually to the Territory's economy.

NTCA works with its members and industry stakeholders in strategically addressing issues of importance to the pastoral sector, including market security, environmental sustainability, and investment in youth and indigenous training and employment.

Intervening factors

Since the Land Claim Report issued in 2003 the following intervening factors should be noted and taken into account:

Relevant parties. While these comments generally apply to any pastoral interest abutting a land claim area, with specific regard to Litchfield Station it is my understanding that the ownership of the pastoral lease changed at about the time of issuance of the Land Claim Report in April 2003. I am unaware of the relevant activity leading to the sale, but this may in part account for the lack of any submission on behalf of Litchfield Station at that time. Ownership again changed hands in or around 2016. In light of this, it should not be inferred – as the Land Claim Report does – that the pastoral interests did not and do not perceive that their interests would be detrimentally affected by a grant of title.



No negotiations or agreement on detriment. There are no active or ongoing negotiations between NTCA and the relevant Land Councils regarding amelioration of detriment to pastoral lease holders should any land claim be granted.

Blue Mud Bay decision. The Terms of Reference make specific reference to the potential impact of the High Court decision in *Northern Territory v Arnhem Land Aboriginal Trust* (2008) 236 CLR 24 (**Blue Mud Bay decision**) on detriment findings. The decision affects the rights of third parties to access waters that may be the subject of land claims. Of particular note, the related detriment extends to recreational fishing and boating – activities of great importance to many of NTCA's members, their families, employees and guests.

Detriment

As the peak body for pastoral interests, NTCA notes numerous detriments that would accrue to pastoral interests from the grant of an abutting land claim.

Need for fence lines. One such detriment is the potential need for fence lines along the common borders of pastoral leaseholds and land claim areas to the extent fences do not currently exist. It is reasonable to believe that new fences lines would need to be installed because if a land claim area becomes Aboriginal land there will be a need to restrict the movement of livestock from that area.

Cost of fence lines. The cost of constructing and maintaining a fence separating claim areas from the pastoral holdings will be borne by the pastoral lease holder if the relevant land trust does not have sufficient assets to contribute to costs, requirements of the *Fences Act* (NT) notwithstanding. If the only appreciable asset a land trust has is the land itself – land that cannot be alienated and against which a lien cannot be placed – then the land trust will be unable to contribute. I can say with certainty that NTCA members have not been successful in securing funds from adjacent land trusts for the construction and maintenance/repair of common boundary fences.

Retrieval of cattle. This is touched on above in the need for fence lines. The precise boundaries of claims involving tidal rivers and intertidal zones abutting pastoral leaseholds may not have been identified. Even if it is possible to so identify, it will not possible to contain cattle within those boundaries absent fencing. Cattle may stray into a claim area and station personnel may need to enter a claim area to retrieve those cattle. Pastoral leaseholds will suffer detriment unless access to the banks, rivers, and intertidal zones is preserved for station personnel to retrieve cattle. Entering a land claim area without a permit granted by the relevant land council is an offense under the Land Rights Act, and the councils are under no legal compulsion to grant such a permit.

Right to take water. The Land Claim Report notes that 'the right of the owner of Litchfield Station under section 13 of the *Water Act* (NT) of access to and over the Daly River bank would be extinguished and the right to take water from the Daly River pursuant to section 11 of the *Water Act* could be interfered with'. This is not a detriment unique to Litchfield Station. It is a detriment that accrues to any pastoralist adjacent to a river bank and who takes water from that river, and one with significant monetary implications.

Quality of life/recreational fishing. Recreational fishing in rivers that cross or abut pastoral leaseholds is of significant importance to the quality of life of many of those pastoral lease owners, their employees, and their guests. The loss of this benefit through the grant of land claims would be a great detriment to the pastoral lease owners and reduce the amenity and quality of life on the stations.

Tourism. A grant of land claim to riverbanks and beds would create detriment for those pastoral lease owners who have or are considering tourist operations to augment their income, especially that which is based on recreational fishing and access to rivers.



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Conclusion

Given the ownership changes with regard to Litchfield Station, the lack of perceived detriment should not be inferred and the current owners/operators should be afforded sufficient time to respond, should they so choose.

The Minister for Indigenous Affairs should reject any recommendation of a grant of land as Aboriginal land for banks, riverbeds, and intertidal zones that abut pastoral leases, as is his power under sections 11 and 67A(5)(d) of the Land Rights Act. In addition to the issues of detriment for which the Minister must have regard, a grant does not provide Aboriginal access rights that do not already exist. The Land Claim Report provides that 'a grant of title would also enliven the as yet unresolved issue... as to whether fishers using tidal waters above Aboriginal land may affix anchors or nets to the bed of the river'. This issue has been resolved in favour of Aboriginal interests, however, by the Blue Mud Bay decision. A grant of this Land Claim area, or any other similarly situated land claim, to a land trust does nothing beyond providing advantage to that land trust built on the detriment to the pastoral lease holder.

The pastoral sector is a significant employer in rural and remote Northern Territory. NTCA assists its member in this regard through its Real Jobs Program (**RJP**), which has operated in partnership with the Indigenous Land Corporation since 2008. Its goal is to increase Indigenous participation in the Territory's pastoral industry by recruiting, training, and placing Indigenous youth in sector jobs with ongoing mentoring to enhance career development and leadership skills. We rely on our members to help to make the RJP the success it has been, but that which works to the detriment of our members makes it all that more difficult for efforts like the RJP to succeed. A grant of land claims is one of those detriments.

Thank you for your consideration in this matter.

Yours faithfully

Paul Burke
Chief Executive Officer