



SUBMISSION

To
Department of Lands
on
The Northern Territory *Pastoral Lands Act*

By
The Environmental Defender's Office (NT)

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Environmental Defenders Office (NT) Inc.
GPO Box 3180,
DARWIN NT 0801

Environment and Planning Law Community Legal Service
• 8 Manton Street, Darwin NT 0800 • email edont@edo.org.au •
• Ph: 08 8982 1182 • Fax: 08 8982 1183 • NT Freecall: 1800 635 944 •

SUMMARY

The *Pastoral Lands Act* (“The Act”) as it currently stands is inadequate as an instrument to support and manage environmental protection.

- 1 The *Pastoral Lands Act* needs more focus on ecological sustainable development (ESD) and should be amended to reflect this need.
- 2 The Objects need to include ESD as a primary Objective.
- 3 The body of the Act should be amended to provide supporting provisions for achieving the ESD objectives. These should include the principles of ecosystem based management and the precautionary principle.
- 4 The Act should incorporate the principles of integrated resource management approaches.
- 5 Protection of habitat requires best practice regulation of land clearing proposals. The Act and Regulations need to be amended to mandate environmental impact analysis of any proposal to clear land pursuant to the *Environmental Assessment Act*. Refusal of a permit to clear should be automatic for any proposal that fails the environmental assessment test.

CONTENTS

Introduction	3
Objects of the Act.....	3
The ecological imperative	4
Tropical savannas.....	4
Arid lands	5
Management approaches	6
Recommendation 1: ESD – Objects and definition.....	6
Ecological protection	6
Good Governance.....	8
Resource management.....	8
Recommendation 2: Ecosystem based management principles.....	9
Recommendation 3: Mandatory management issues	10
Recommendation 4: Land clearing.....	11
Conclusion.....	11

SUBMISSION on *PASTORAL LAND ACT (NT)*

The Environmental Defender's Office (NT) Inc. ("EDO") thanks you for the opportunity to present this submission in relation to the *Pastoral Land Act* 1992 ("the Act").

The EDO notes the Discussion paper released in July 2004 and invites the Committee to consider the submission made by the EDO on the 19 August 2004 on that discussion paper as relevant to this review.

The Act is the primary authority for the administration of nearly one half of the total land mass of the Northern Territory. The Act ought to cover, at some depth, three key areas of administration –

- 1 Administration of Certificate of Title for land under the purview of the Act;
- 2 Administration of social interactions with the land (i.e. public access, aboriginal community etc.)
- 3 Environmental protection.

It is with the third key responsibility of the Act that the EDO is particularly concerned, and which forms the foundation of this submission.

As the Act currently stands a mere four sections of the Act are devoted to environmental protection. These include –

- the Objects (section 4 subsection (b)),
- general duties of pastoral lessees, (subsections 6(b) and (c)),
- conditions of pastoral leases (subsection 38(1)(h)) and
- conditions relating to land management (subsection 39(b)).

Clearly the Act is deficient as authority for protecting the environment. It fails to deliver the policy direction needed to even fulfil its own objectives.

The Objects include the following reference to environmental protection –

“to provide for –

- (i) the monitoring of pastoral land so as to detect and assess any change in its condition;

- (ii) the prevention or minimisation of degradation of or other damage to the land and its indigenous plant and animal life; and
- (iii) the rehabilitation of the land in cases of degradation or other damage;”

It is noted that section 5 of the Act imposes a duty on the Minister and the Board to act consistently with and to further the Objects of the Act. It is the EDO view that the greater proportion of effort of the Department responsible for implementing this Act should be devoted to developing the environmental protection measures required to fulfil the duty of furthering the Objects of the Act.

The ecological imperative

The EDO believes that the principal Act for administering such a large area of diversified landscape should incorporate the principles of ecological sustainability and integrated catchment management as core considerations in the management of pastoral land. The adoption and integration into land management practices of ecosystem based management (“EBM”) is fundamental to establishing sustainable use of land.

The pastoral industry in the Northern Territory extends across two fundamentally different ecological systems¹: the tropical savannas in the north, and the arid and semi-arid rangelands of central Australia. The Act regulates land use over these vast and ecologically diverse regions.

The Tropical Savannas

The tropical savanna is a highly dynamic landscape, with constant changes in environmental boundaries and in the distribution of species. The ecology of the tropical savannas is driven by a distinct monsoonal pattern with a very long dry season and a short wet season. This seasonality leads to dramatic annual fluctuations in resources for the resident biota. Many species cope with these seasonal fluctuations by being highly mobile and tracking food resources over extensive areas. Conservation of these species must be considered on a landscape scale. The management of both pastoral lands and national parks are crucial to their conservation.² There are also many sedentary species in the tropical savannas. These species are prone to the extinction of local populations when resources disappear at the end of the long dry season or are affected by fire.

¹ The information in this submission about ecology draws on a paper by Freya Dawson – *Adapting Land Management Law to the Land: A critical look at the Pastoral Land Act 1992*

² Parks and Wildlife Commission of the Northern Territory, *Northern Territory Parks Masterplan: towards a Secure Future* (1996),72-73 (Northern Territory Parks Masterplan).

However this local loss of biodiversity is temporary as these species are regularly recolonised across a relatively barrier-free landscape.

The tropical savannas are fire-prone. The long dry season creates a dense, extensive ground-layer of highly inflammable' grasses, readily ignited by the lightning that often occurs at the beginning of the wet season. Indigenous peoples have used fire for millennia to manage these ecosystems. The combined effect of fires lit by lightning and humans creates a complex, shifting mosaic of variability that contributes to the maintenance of local biodiversity. The timing and intensity of fires creates added variability. This mosaic dictates the probability of survival of populations of sedentary species and the regional distribution patterns of more mobile species. Where there is uniformity in fires over many years and over large areas regional extinctions occur. Proactive management by humans to maintain this shifting mosaic across the landscape is crucial to the maintenance of biodiversity.

The Act's present position on the ecological imperative

This information about the ecology of the Northern Territory is well known and accepted. But the Act makes no reference to ecology and ecosystem maintenance nor to the management principles that have evolved and continue to evolve and that ought to underpin the management of these vast areas. Management plans / guiding principles need to be developed or articulated for lands of different ecosystem types.

Arid Lands

The arid southern part of the Northern Territory contains immense tracts of sandy desert, mulga woodlands, spinifex grasslands, chenopod (saltbush) shrublands, desert rivers and salt lakes. The spinifex grasslands alone cover 38% of the land area of the Northern Territory. The arid and semi-arid zones have a distinctly different biota to the tropical savannas including many unique plant and animal species. In contrast to the tropical savannas, the ecology of arid Australia is driven by rainfall variation between years rather than seasonally. The climate is capricious, swinging unpredictably from heavy rain to drought. These fluctuations mean that no one place can be considered permanently occupiable by some plant or animal species. Local extinctions are inevitable during prolonged drought but recolonisation will eventually occur from refuge areas or from adjacent regions. This pattern of adaptation to a capricious climate has evolved over millennia but is subject currently to severe disturbance.

Management Approaches

The evolution and great variety of the ecosystems in the Northern Territory and the high variability of rainfall patterns from year to year mean that management approaches must take the very long term view if environmental degradation is not to occur. Management approaches need to think seriously about more than stock carrying capacity and measures to avoid soil erosion. This approach to land management is, of course, not a novel concept. It is widely accepted as a common sense approach and has been adopted across Australia but what is required is legislative recognition of these concepts and the weight of statutory authority to ensure that they are adopted and applied here in the Northern Territory . The Objects section of the Act needs to be amended to this end, but it is only the starting point as other amendments of the Act are also required to achieve this aim.

<p>Recommendation 1: Include the principles of ecological sustainability in Objects and Interpretation sections</p> <ul style="list-style-type: none">••----
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EDO proposes that the following principles³ should be incorporated into the Act. This may best be achieved by inserting a new Part into the Act – Management of Pastoral Land. The Part should also require lessees to inform themselves of ecosystem based management approaches or to participate in compulsory practice management education so that knowledge of how these principles can be applied in practical terms becomes inculcated throughout managers in the industry.

- 1 Ecological protection: management regimes must recognise, understand and protect the ecosystems of the Northern Territory –

³ Jon Nevill: *Good governance of the oceans: a summary of key resource management principles.*

- a. Protected areas and complementary management of all other areas. Biodiversity should be protected by the establishment of a comprehensive, adequate and representative system of ecologically viable protected areas, integrated with the management of all other areas based on ecological protection strategies. Since pastoral land covers nearly 50% of the Northern Territory it is essential that this land be included in the management considerations of protected areas. The size of protected areas are often relatively small so to manage protected areas without consideration of the effects of the larger surrounding areas would be a failure to manage for ecosystem sustainability.
- b. Special ecological values. Ecosystems and species of special value or vulnerability need special protection. Where these fall within pastoral, leases special management strategies need to be developed to afford them the protection that is warranted.
- c. Economic progress can occur within ecological limits so that sustainable economic progress works on the basis of no net loss of ecological assets. Short-term gains must be weighed up from a long-term perspective - sustainability must not be prejudiced by short-term gains achieved at the expense of declining ecological services, values or resilience.
- d. Ecological scale. Arrangements for the management of ecosystems (or for managing the human impacts on ecosystems) need to recognise, understand and accommodate the important ecological processes and linkages in operation, and the scales and time-frames at which they apply. Integrated and cohesive management should be applied across jurisdictional boundaries within the commons, recognising that the integrity of cross-boundary ecosystems needs to be understood and protected.
- e. Market externalities and ecological incentives. Economic incentives should be applied to markets so as to ensure that economic progress in the long term goes to those who compete best while maintaining or improving ecological assets and integrity. The use of natural assets must be correctly costed (To make you think about costing the use of natural resources consider the following question. Is it possible to put a cost on a species going to extinction? To paraphrase John Donne – no life form is an island entire of itself) .

- 2 Good governance. The concept of the stewardship of land and principles of biodiversity maintenance mean that a particular lessee of pastoral land ought to recognise that management decisions, as far as they impact on the long term viability of the resource, should derive from management regimes that call on the participation of all stakeholders, and should be
- a. transparent,
 - b. reliable,
 - c. accountable,
 - d. enforceable,
 - e. ethical (have integrity),
 - f. cost-effective,
 - g. flexible and also practical.

We are not talking about commercial in confidence management decisions here although clearly the above considerations will have an impact on assessments of what is profitable and inform management decisions in that light. What is important is that lessees come to understand that management of such large tracts of land is not management of the bottom line alone but carries a far deeper responsibility. This leads to the third principle.

- 3 Resource management: The pastoral land resource should be used wisely, fairly, and without unnecessary waste, taking into account the needs, rights and responsibilities of current generations, the differing economic, cultural, political and technical resources of stakeholders and the rights of future generations. Management decisions must recognise the need to pass on both renewable and non-renewable resources to future generations in a way which does not unduly prejudice their, i.e. the future generations, options.

In doing so, management regimes should take account of:

- a. the rights and responsibilities of stakeholders,
- b. market behaviour and imperfections,
- c. the need for a precautionary approach in the face of complex and uncertain futures,
- d. the need to manage the cumulative impacts of incremental growth in resource use, and

- e. the ability of an adaptive approach to deliver continuous improvement in management outcomes.

A separate Part on management would also need to include operative provisions beyond just principles – possibly requiring the department to prepare management plans for various pastoral areas which could in turn govern land use decisions such as the development of works, carrying out of agricultural activities, clearing and so on. This would probably then require consequential amendments to other Acts to require decisions made under those Acts to be consistent with the terms of any management plan made under this Act.

Recommendation 2

The principles described above are not guidelines but are the three limbs of the environment test that any proposed management plan or action can be assessed against and meet or surpass before the action can be taken. Management outcomes must be evaluated against the three limbs of this test and feedback loops developed which must inform on-going decision making.

- The practicalities of how this is achieved can be incorporated into Regulations but the principal Act needs to make it clear that these principles form the basis of management approaches.
- Pastoral Land Management practices need to be informed by better expert support and education programs delivered to the farm gate. Provisions need to be included in the Act

to ensure that this happens and that government departments are required to identify areas of deficiency and provide the required assistance.

In a recent review of the sustainability of pastoralism across Australia, Stafford Smith, Morton and Ash⁴ stress that it is the resilience of a system to management mistakes (its ability to absorb disturbance before a significant change in state occurs) that is crucial. The risks associated with making a mistake are different between regions.

In some rangeland regions the problems for sustainable land use are relatively minor, but in others they are severe. The authors assess the risks using a combination of environmental factors as well as ease of management and the costs of production. The extent to which management mistakes can be reversed by investment in rehabilitation is also included in the assessment. For example, pastoralism in the MacDonnell Ranges region of central Australia is assessed as having a high risk of causing damage to the public interest in ecological sustainability. A number of other Northern Territory regions are assessed as having moderate risk.

In all regions stocking rates are a particularly important factor, both at the pastoral lease level and within very large paddocks. Appropriate stocking rates vary greatly depending on fluctuations in climate and other regional factors. Management decisions about stocking levels must not be taken only on what the carrying capacity is at the current time but include considerations of the long term carrying capacity as well as the effects from the potential disturbance to ecosystems and biodiversity. Included here must be considerations of fire management regimes based on scientific assessment of how different fire regimes will effect ecosystems, biodiversity and other resources.

Recommendation 3: Include mandatory Issues for management consideration and support

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⁴ Stafford Smith DM, Morton SR and Ash AJ, "Towards Sustainable Pastoralism in Australia's Rangelands" (2000) 7 *AJEM* 190, 192, 196

Habitat loss is one of the major causes of species decline. We are currently, at the global level, experiencing the greatest rate of species extinction⁵ since the extinction episode of 70 million years ago when the dinosaurs disappeared. We should endeavour to do everything in our power to halt and reverse this trend.

Protection of habitat requires best practice regulation of land clearing proposals. The Act and Regulations need to be amended to mandate environmental impact analysis of any proposal to clear land. Refusal of a permit to clear should be automatic for any proposal that fails the environmental assessment test.

Recommendation 4: Enhance provisions constraining land clearing

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- - gical sustainability,
 - biodiversity conservation
 - habitat protection
 - consideration of the cumulative effect of adjoining land clearing proposals.

⁵ Global Biodiversity Assessment. UNEP. Cambridge University Press, 1995.

Conclusion

The current Act focuses on administration of title for pastoral leases. This focus needs to be redirected to achieving ESD through mandated ecosystem based management principles. The Pastoral Lands Board composition is heavily weighted in favour of pastoralists. This needs to be changed to allow for ecologists and science experts to be appointed.

Once again thank you for allowing the EDO (NT) to present this submission.



Tom Cowen

BA BSc LLB(Hons) M.Env.S

Principal Lawyer