



24 September 2021

To

Julie Ross
Chair
Pastoral Land Board

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Dear Chair,

Pastoral Land Board compliance and enforcement framework

Thank you for the opportunity to provide a comment on the Pastoral Land Board's (PLB) draft compliance and enforcement framework (**Draft Compliance Framework**).

The Environment Centre NT (ECNT) is the peak community sector environment organisation in the Northern Territory of Australia, raising awareness amongst community, government, business, and industry about environmental issues, assisting people to reduce their environmental impact, and supporting community members to participate in decision-making processes and action.

Close to half of all land in the Northern Territory (45%, or 596 542km²) is held under just 224 pastoral leases. Importantly, pastoral leases comprise a very limited form of tenure (effectively a right to graze cattle and ancillary purposes) and are subject to co-existing native title rights and interests recognised under the *Native Title Act*. Custodians of sacred sites have rights of access to sacred sites on pastoral leases under the *Northern Territory Aboriginal Sacred Sites Act (NT)*. Pastoral leases in the Territory are also subject to public rights of access (see for example, the right of the public to access perennial natural water without the permission of the pastoral lessee at s79(1) of the *Pastoral Land Act*. The pastoral estate must thus be managed by the PLB for the benefit of not just the pastoral lessees, but native title holders, traditional custodians of sacred sites, and the public at large.

The pastoral estate of the Northern Territory has never been more at risk. Recent research indicates that Northern Australia's tropical savannas and its arid zone are two of 19 ecosystems in Australia that meet the criteria of being under collapse.¹ Bergstrom et al suggest that it is imperative to understand how different threatening processes combine cumulatively (acting in what they term "threat webs") to further threaten Australia's collapsing ecosystems. As habitats become increasingly fragmented through land clearing or degraded through unsustainable practices, threatened species become more vulnerable to other threatening processes, such as climate change, changes in streamflow regimes, predation by invasive species and destructive fires, and they lose the ability to recolonise suitable

¹ Bergstrom et al. 2021. "Combating ecosystem collapse from the tropics to the Antarctic." *Global change biology* 27(9):1692-1703.

habitat. Other research indicates that, based on current trends, many native mammals will be extinct in northern Australia in the next 10-20 years.²

Amid this troubling environmental context, the Northern Territory Government, and the PLB, have proceeded with plans to streamline pastoral land clearing approvals to facilitate the rapid expansion of industrial-scale irrigated and dryland agriculture in the Territory, including for cotton, predominantly on the pastoral estate. The *Pastoral Land Act* is manifestly inadequate to manage the impacts of these large-scale proposals, as ECNT has repeatedly maintained publicly and through numerous submissions to the PLB, the NTEPA and the Minister.

ECNT acknowledges that the preparation of the Draft Compliance Framework represents an important step forward in the history of the management of the pastoral estate in the Northern Territory. However, given the significant environmental threats to the pastoral estate in the Territory (outlined below), ECNT's view is that the Draft Compliance Framework is inadequate to safeguard the Territory's pastoral estate for all Territorians. This is largely due to the poor enforcement and compliance mechanisms in its governing legislation, the *Pastoral Land Act*. Where remedies exist for breaches of the legislation, they are discretionary and do not provide adequate certainty. In ECNT's view, it is imperative that the Northern Territory Government enact new legislation to protect native vegetation, such as that recently proposed by the Environmental Defenders Office.³ The proper regulation and sustainable management of native vegetation and biodiversity, together with a comprehensive framework to establish and guide modern conservation policy through ecosystem or landscape scale management, would deliver significant benefits for the Territory's environment and communities.

If anything, the Draft Compliance Framework gives even more discretion and latitude to the PLB and individual departmental officers with respect to the crucial functions of compliance and enforcement of illegal activities and practices on pastoral land. The creation of "non-statutory compliance pathways" is dubious, and is likely to give pastoral lessees a green light to pursue illegal activities on their land without appropriate consequences.

ECNT believes that the consultation process and period for the Draft Compliance Framework is inadequate and cursory, given the importance of the issues raised by the Framework, its length and its complexity. ECNT had a one hour meeting with departmental officers, and was given approximately one month to respond to the Draft Compliance Framework. It is unclear which stakeholders were consulted prior to the release of the Draft Compliance Framework, but ECNT wishes to put on the record that it was not consulted prior to its release. Nor has ECNT been consulted about the proposed changes to the *Pastoral Land Act* which have been introduced to Parliament this week. These amendments would appear to be directly relevant to matters the subject of the Draft Compliance Framework.

We note our key concerns below:

1. Lack of environmental objectives and definitions

Despite the environmental and biodiversity threats to the pastoral estate outlined above, there is little to guide the PLB regarding how it is to assess environmental impacts on the pastoral estate. The PLB has an obligation under s39(b) to take all reasonable measures to conserve and protect features of environmental, cultural, heritage or ecological significance. ECNT notes that it was a

² <https://www.natureaustralia.org.au/content/dam/tnc/nature/en/documents/australia/Into-Oblivion.pdf>.

³ <https://www.edo.org.au/publication/a-biodiversity-conservation-and-land-management-act-for-the-northern-territory/>.

key recommendation of the WA Auditor General’s report on the Management of Pastoral Lands in Western Australia that a definition of “ecological sustainability” should be developed to assist implementation of the WA pastoral land legislation. Similarly, there should be clear guidance in the Draft Compliance Framework for how the PLB is to comply with its obligations in s39(b). Cross-referencing other guidelines under different regulatory regimes is inadequate.

2. Inadequate recognition of co-existing native title rights and interests

As mentioned above, pastoral leases in the Northern Territory are generally subject to co-existing native title rights and interest, and sacred site protections. The Northern Land Council and Central Land Council, as the Northern Territory’s native title representative bodies, are key stakeholders in the management of the pastoral estate. The lack of any reference to land councils, and the minimal reference to native title rights and interests in the compliance framework, is manifestly inadequate. ECNT would have expected the Draft Compliance Framework to have been developed in collaboration with land councils and Traditional Owners.

3. Excessive discretion

ECNT is concerned that there are significant risks associated with the non-statutory compliance pathways identified throughout the Draft Compliance Framework. There is far too much discretion held by individual officers and the PLB regarding whether and when statutory versus non-statutory pathways will be embarked upon, what actions will be taken and in what circumstances, and when investigations and compliance actions will occur. While ECNT notes the desire of the PLB to foster a “culture of compliance”, the approach taken in the Draft Compliance Framework may well entrench the current culture of latitude, uncertainty and non-compliance with respect to pastoral estate management.

4. Lack of clarity regarding complaints processes, and when investigations will be triggered

In ECNT’s view, the process for complaints by third parties needs to be more clearly defined, including through the development of published procedures. Further, there should be annual reports published of all complaints received, not just investigations undertaken with respect to those complaints.

5. Non-pastoral use permits

ECNT remains concerned that non pastoral activities are occurring on pastoral leases for which lessees have not secured non-pastoral use permits. Specifically, large-scale land clearing and associated irrigated and dryland agriculture for commercial ends are not “pastoral purposes” and are inconsistent with native title rights and interests, and with public rights of access. Non-pastoral use permits significantly impact the exercise of other legal rights, more so than any other permit or approval under the legislation. Appropriate compliance and regulatory action is inhibited by a lack of clarity regarding when non-pastoral use permits are required (and relatedly how “pastoral purposes” are defined). There is too much discretion built into the Draft Compliance Framework for breaches of the Pastoral Land Act with respect to non-pastoral use permits, including when they are required. This will enshrine a continued culture of non-compliance, not compliance.

6. Pastoral land clearing permits

Land clearing is a fundamental pressure on the environment. Land clearing causes the loss, fragmentation and degradation of native vegetation, and a variety of impacts on soils (eg erosion, salinity, loss of nutrients and acidification) and disrupts essential ecosystem processes.

ECNT is extremely concerned by the rate of increase in land clearing applications and approvals in the Northern Territory, particularly in the Daly and Katherine catchments. The PLB considered applications for 21,700 hectares of land clearing in 2020, more than double the area approved for clearing in 2019, and more than ten times the area approved in 2018. The PLB approved 12,900 hectares of clearing were approved in 2020 with applications for a further 8,800 hectares of clearing held over pending further information. In 2021 so far, an application for 4,100 hectares of clearing is under assessment pending further information. ECNT understands that this is likely to be the start of an avalanche of applications. The NT Farmers Association has revealed plans for 168,000 hectares of farming development across the Northern Territory focused particularly on the Daly catchment, which will not only increase the Northern Territory's greenhouse gas emissions significantly, but also require millions of litres of the Northern Territory's groundwater and surface water, as well as exacerbating the impacts of climate change (through increased heat and changes to the water table from clearing and irrigation).

The new "simplified" process for pastoral land clearing permits of up to 1000 hectares is a significant step backwards from an already inadequate regulatory regime. ECNT is very concerned that the PLB has delegated its functions in this regard to departmental officers who are ultimately answerable to the Minister. This is not arms-length regulation.

Given its impacts on biodiversity, and the rapid rate of increase in land clearing in the NT facilitated by an inadequate regulatory system, it is vital that the consequences of breaches of the legislation with respect to land clearing have clear compliance and enforcement pathways. The Draft Compliance Framework does not achieve this outcome. There is too much discretion built into the Framework for breaches of the Pastoral Land Act with respect to land clearing. This will enshrine a culture of non-compliance, not compliance.

7. Inadequate resourcing of monitoring and compliance

A key concern raised by the Western Australian's review into pastoral lease management was the lack of resources given for monitoring and compliance by the WA Government. This is crucial for any environmental regulatory system. For any compliance or monitoring framework to succeed, it is vital that the Department be appropriately resourced to undertake these functions. ECNT is concerned that the Department remains under resourced and equipped to undertake these important functions. The PLB (or the Northern Territory Government) should make explicit what resources are being allocated to implement the Draft Compliance Framework.

If you have any questions, please do not hesitate to contact Kirsty Howey on kirsty.howey@ecnt.org.

Yours faithfully,

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