



# 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

19 April 2018

Aboriginal Land Commissioner  
Office of the Aboriginal Land Commissioner  
GPO 9932  
Darwin NT 0801

Attn: The Hon John Mansfield AM QC

By email: [AboriginalLandCommissioner@network.pmc.gov.au](mailto:AboriginalLandCommissioner@network.pmc.gov.au)  
[elena.zola@network.pmc.gov.au](mailto:elena.zola@network.pmc.gov.au)

Dear Commissioner Mansfield

**Re: Invitation to participate: Review of detriment issues – Lower Roper River Land Claim No. 70, Upper Roper River Land Claims comprising: Mataranka Area (NT Portion 916) Land Claim No. 129; Western Roper River (Bed and Banks) Land Claim No. 141; Roper Valley Area Land Claim No. 164 and Elsey Region Land Claim No. 245**

Thank you for your letter of 17 April 2018 inviting the Northern Territory Cattlemen's Association (**NTCA**) to participate in a review of detriment issues for Lower Roper River Land Claim No. 70 as contained in the Aboriginal Land Commissioner's Report of March 2003, and the Upper Roper River Land Claims comprising: Mataranka Area (NT Portion 916) Land Claim No. 129; Western Roper River (Bed and Banks) Land Claim No. 141; Roper Valley Area Land Claim No. 164 and Elsey Region Land Claim No. 245 as contained in the Aboriginal Land Commissioner's Report of April 2004. While multiple land claims are at issue here, I will simply refer to them as the singular "Land Claim".

While my comments are in the context of this Land Claim, I will be 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). The general subject matter of my comments is noted in the Detriment section below. More detail will be provided by 29 May 2018 as provided for in your invitation to participate

## 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. Pastoralists have stewardship of over 700,000 km<sup>2</sup> 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

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

Suite 9, 1<sup>st</sup> Floor, Raffles Plaza, 1 Buffalo Court, Darwin NT 0800 | GPO Box 4845, Darwin NT 0801

T: (08) 8981 5976 | F: (08) 8981 9527 | E: [office.darwin@ntca.org.au](mailto:office.darwin@ntca.org.au) | W: [www.ntca.org.au](http://www.ntca.org.au)



## Detriment

Several pastoral leaseholders are impacted by the Land Claim. It is my understanding that at least one pastoralist affected by the Land Claim will be participating in the detriment review and speak to the detriments that he or she will suffer if the Land Claim is granted. As the peak body for pastoral interests, NTCA will thus speak to more industry-wide detriments that would accrue from the grant of an abutting land claim. These may include, but are not limited to:

Cumulative detriment/effect on patterns of land use in the region. The grant of the Land Claim will have potentially serious detrimental impacts on attempts to increase pastoral diversification.

Investor confidence and security. The grant of the Land Claim will have a negative impact and on investor confidence and security in the pastoral sector.

Likelihood of reaching reasonable and just accommodation. Access to the Roper River, and any other river subject to a land claim, is critical to the livelihood of pastoralists. It should not be assumed that reasonable and just accommodations can be reached with the relevant land council regarding pastoralist access to those rivers.

Thank you for your consideration in this matter.

Yours faithfully

Paul Burke  
Chief Executive Officer  
NT Cattlemen's Association

**Partners:**  
Kevin Stephens  
Leon Loganathan  
Ashley Heath  
Michael Grove  
Teresa Hall  
Kaliopi Hourdas

Our ref: 20180019:BST

28 May 2018

**Consultants:**  
Carolyn Walter  
Markus Spazzapan  
Tony Whitelum  
Charlie Martel

**By Email: [AboriginalLandCommissioner@network.pmc.gov.au](mailto:AboriginalLandCommissioner@network.pmc.gov.au)**

The Hon John Mansfield AM QC  
Aboriginal Land Commissioner  
GPO 9932  
Darwin NT 0801

**Senior Associates:**  
Emma Farnell  
Tessa Czislowski

**Conveyancing Manager:**  
Theresa Cocks

Dear Commissioner Mansfield

**UPPER ROPER RIVER LAND CLAIMS COMPRISING MATARANKA  
AREA (NT PORTION 916) LAND CLAIM NO 129; WESTERN ROPER RIVER  
(BED AND BANKS) LAND CLAIM NO 141; ROPER VALLEY AREA LAND  
CLAIM NO 164 AND ELSEY REGION LAND CLAIM NO 245**

**Darwin**  
Level 7, NT House,  
22 Mitchell Street  
T 08 8946 2999

Please find attached the statement of Paul Burke on behalf of the Northern Territory Cattlemen's Association in the above-referenced matter.

**Palmerston**  
Suite 2  
6 Woodlake Boulevard  
T 08 8931 3388

Yours faithfully  
**WARD KELLER**

**Casuarina**  
Unit 3  
293B Trower Road  
T 08 8942 2333

  
**BRADLY TORGAN**  
Senior Lawyer  
Secretary: **Stella Noor**

**Alice Springs**  
Suite 3, 1<sup>st</sup> Floor  
Mbantua Offices  
64 Todd Street  
T 08 8952 4200

Direct Line (08) 8946 2939  
Email [bradlytorgan@wardkeller.com.au](mailto:bradlytorgan@wardkeller.com.au)

cc: Elena Zola, Office of the Aboriginal  
Land Commissioner  
[Elena.ZOLA@network.pmc.gov.au](mailto:Elena.ZOLA@network.pmc.gov.au)

**ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976**

**UPPER ROPER RIVER LAND CLAIMS COMPRISING MATARANKA AREA  
(NT PORTION 916) LAND CLAIM NO 129; WESTERN ROPER RIVER  
(BED AND BANKS) LAND CLAIM NO 141; ROPER VALLEY AREA  
LAND CLAIM NO 164 AND ELSEY REGION LAND CLAIM NO 245**

**REVIEW OF DETRIMENT ISSUES: STATEMENT OF PAUL BURKE**

1. My name is Paul Burke. I am the Chief Executive Officer ("CEO") of the Northern Territory Cattlemen's Association ("NTCA"), located in Darwin NT. I became CEO in October 2017.
2. This statement is based on my personal knowledge, except as to that which is based on information and belief. As to those matters, I believe them to be true based on information and belief. If called upon to testify I could and would competently testify as to the facts set forth in this statement.
3. 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. Pastoralists have stewardship of over 700,000 km<sup>2</sup> 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.
4. Prior to becoming CEO of NTCA, I was the Regional Operations and Member Services Manager for Agforce in Townsville, Queensland, for whom I had worked since 2011. Agforce is the peak body in Queensland for cattle, sheep, and broadacre crop producers.
5. I have over twenty-five years' experience in management and operational roles in the tourism and pastoral care sectors.
6. My statement will address three areas of industry-wide concern relative to the land claim at issue;
  - a. the negative impact of land claims cumulatively on pastoral diversification efforts;
  - b. investor insecurity occasioned by land claims, and
  - c. the ability of a pastoralist to access Aboriginal land in order to retrieve cattle.

These issues were not addressed in any direct way in the 2004 Upper Roper River Land Claims Report.

**Pastoral diversification**

7. Pastoral diversification is an important policy and priority for both the NTCA and the Northern Territory Government as a means of ensuring and strengthening the economic sustainability of the pastoral industry.
8. With regards to pastoral diversification, NTCA employs a full-time business development officer (BDO) who works with pastoralists on business diversification based on the characteristics of the individual pastoral leaseholds. The employment of a BDO pre-dates my tenure at NTCA.



9. For pastoral properties with scenic vistas and coastal and/or river access, those diversification efforts could include wildlife tours, bush camping, station tours, and four-wheel drive expeditions.
10. In areas with good access to fresh water, agriculture and horticulture provide promising pastoral diversification opportunities. Aquaculture also has promising opportunities for pastoralists adjacent to inter-tidal zones and the coastline, as witnessed by the Seafarms aquaculture project at Legune Station.
11. Within the area covered by the Upper Roper River Land Claims, I am generally aware of on-going pastoral diversification efforts into broad-scale agriculture at Flying Fox, as well as diversification efforts at Big River.
12. Increased diversification efforts will likely be at least partially dependent on the *Pastoral Land Legislation Amendment Bill 2017*, which was introduced by the Northern Territory Labour Government in October 2017. Amongst other items, the legislation would broaden sublease options under pastoral leaseholds to expand the range of existing non-pastoral uses to include horticulture, agriculture, aquaculture and forestry. The subleases can be registered on the title to provide a security for investors. Certain tourism-related uses would also be easier to establish. The Economic Policy Scrutiny Committee of the Northern Territory Legislative Assembly recommended approval of the legislation in March 2018 with some amendments unrelated to the expansion of diversification opportunities.
13. NTCA supports the legislation and I have met with relevant government Ministers and department personnel to lobby for its passage on behalf of pastoral interests.
14. It is my belief that the legislative scheme for pastoral leases that currently exists has not made it entirely attractive to attempt diversification into non-pastoral uses. The 2017 amendments to the *Pastoral Land Act* are designed, in part, to change that and make it more attractive for pastoralists to diversify.
15. This land claim, along with all bed and banks claims cumulatively, will place at risk attempts to broaden patterns of land use throughout the region. Access to beds and bank of rivers - and the waters that can generally only be reached by crossing those beds and banks - is critical for diversification efforts.
16. Reducing the opportunity for pastoral diversification has more than a cumulative detriment to just the pastoral industry. Reducing the opportunity for pastoral diversification creates a cumulative detriment to the region as a whole by reducing economic opportunities in the Top End, along with potential job creation that could occur through diversification, be it in tourism, aquaculture, horticulture, or any other legal non-pastoral use.

#### **Investor insecurity**

17. An Aboriginal land claim creates business insecurity by creating uncertainty. From a pastoral standpoint, a land claim muddles tenure. While a land claim is pending, a pastoralist does not know if he or she will lose access to land and waters to which he or she currently has access. This land and water may be critical to a pastoralist's livelihood.
18. This uncertainty can have significant economic detriments. For a pastoralist trying to plan both for the short term and long term, the uncertainty can negatively affect decision-making on everything from stocking rates to investments in capital improvements and infrastructure for both pastoral uses and non-pastoral diversification efforts.

19. Even if granted, a land claim still creates investor insecurity because of the uncertainty surrounding closure of the land claim area. There is no assurance that reasonable accommodation can be reached for pastoralist access to bed and banks that is lost as the result of the grant of a land claim.
20. I believe this to be so because bed and banks claims (as well as inter-tidal zone claims) differ from other Aboriginal land claims in at least one significant respect. The value to a land trust with title to the bed and banks of a river is not in its ability to use or access that land in a way that is not already available to it. As a general proposition, access already exists. Protections are also available for sacred sites within bed and banks land claim areas. Rather, the advantage that accrues to the land trust lies instead almost entirely in its ability to exclude others. That is why I am not confident that even the grant of land claims will restore investor security.
21. I point out that this does not appear to be only my belief. The limited tangible benefit to the claimants at the expense of third parties was touched on by Commissioner Olney in his 2004 Upper Roper River Land Claims Report. In particular I note paragraph 73(e), '[t]he advantage derived from a grant of title would be confined to the recognition of the claimants' traditional attachments to the land and to the capacity to exercise some limited influence over recreational fishing and tourist activity in the region in the future'.
22. This investor insecurity may be magnified when a pastoral property is the impacted by more than one land claim, as is the case here. Flying Fox, Lonesome Dove, and Big River stations are all impacted not just by the Upper Roper River Land Claims; they are also heavily impacted by Mataranka Land Claim No 69 (**Mataranka Land Claim**).
23. The Mataranka Land Claim is not a beds and banks claim. It is instead a claim for a portion of the Urapunga Stock Route that bisects those three stations, cutting off most of each of the respective properties from the Roper Highway. To the extent that the claimants in the Mataranka Land Claim are different from the claimants in the Upper Roper River Claims, there may be different or even competing interests between the respective claimants, making overall negotiations for access even more difficult for pastoral owners.

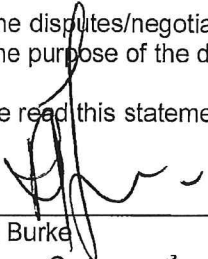
#### **Ability of pastoralists to retrieve cattle from Aboriginal lands**

24. In response to land claims currently before the Aboriginal Land Commissioner, pastoralist members of the NTCA have raised the concern with me that they will be unable to retrieve cattle that have wandered onto a land claim area without permission from the land trust and the relevant land council. As the CEO of the peak body for the pastoral industry, with the ability to see an industry-wide picture, I believe that denial of access is more than just a hypothetical or remote concern.
25. I have direct, first-hand knowledge of several such disputes/negotiations that are not being resolved in a timely manner and that are adversely affecting pastoral operations. I do not, though, wish to name specific parties unless information about the parties and the disputes can remain confidential. Even though they have not been successful to date, I believe the parties are continuing to negotiate in good-faith to seek resolution. My concern here is that this statement will become a public document and that providing specificity as to the disputes, negotiations, and parties involved in a public forum would be counter-productive to resolution of many, if not all, of those matters.
26. I would be willing to provide specifics, however, if the Aboriginal Land Commissioner believes it will be helpful and is willing to place my additional testimony under seal and restrict its distribution and use in a manner that assures it will only be seen by those who

are parties to the disputes/negotiations and that it will not be communicated to any person other than for the purpose of the detriment review.

I declare that I have read this statement carefully before signing it and believe it to be true and correct.

Signed

  
\_\_\_\_\_  
Paul Burke

Date

\_\_\_\_\_  
25-5-18



Our ref: 20180019:BST

26 September 2018

**Consultants:**  
Carolyn Walter  
Markus Spazzapan  
Tony Whitelum  
Charlie Martel

By Email: [AboriginalLandCommissioner@network.pmc.gov.au](mailto:AboriginalLandCommissioner@network.pmc.gov.au)

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Darwin NT 0801

**Senior Associates:**  
Emma Farnell  
Tessa Czislawski

Dear Commissioner Mansfield

**Conveyancing Manager:**  
Theresa Cocks

**RESPONSE TO THE CLAIMANTS SUBMISSION ON LOWER ROPER RIVER  
LAND CLAIM NO 70 AND THE UPPER ROPER RIVER LAND CLAIMS;  
MATARANKA AREA (NT PORTION 916) LAND CLAIM 129; WEST ROPER  
RIVER LAND CLAIM NO 141; ROPER VALLEY AREA LAND CLAIM NO 164**

**Darwin**  
Level 7, NT House,  
22 Mitchell Street  
T 08 8946 2999

I am providing the following responses on behalf of the Northern Territory Cattlemen's Association (NTCA) to the submissions of the NLC on the Upper Roper River Land Claims, which you have referred to as the Grouping 5 Land Claims.

**Palmerston**  
Suite 2  
6 Woodlake Boulevard  
T 08 8931 3388

**I ABANDONMENT OF ASSERTION OF CONSTRUCTIVE KNOWLEDGE  
OF LAND CLAIMS**

**Casuarina**  
Unit 3  
293B Trower Road  
T 08 8942 2333

At [27] of its Upper Roper River Land Claims submission NLC admits it is not a simpler matter to ascertain the land claim status of Land Claims 164(i) & (ii) and Land Claim 141. These are bed and banks claims, which NLC has contrasted to the Mataranka Land Claim.

**Alice Springs**  
Level 2, NT House  
44 Bath Street  
T 08 8952 4200

At [21] of its Mataranka Land Claim submission NLC admitted something similar, "[c]laims of ignorance are more readily accepted with claims to intertidal the intertidal zone and beds and bank when in the absence of a survey there may have not been either allocation of a parcel number and an Administrative Interests record, or they simply had no obvious need to make inquiry".

By these two admissions NLC has essentially abandoned any argument of what is, in effect, a claim of constructive knowledge of beds and banks and intertidal zone Land Claims. To the extent NLC has asserted that a party 'should have known' about those claim with regard to any of the outstanding Land Claims for which detriment review is being undertaken, those assertions should be dismissed and given no weight or credibility whatsoever.

**FAILURE TO RESPOND TO CLAIMS OF INDUSTRY-WIDE DETRIMENT**

At [29] NLC dismisses NTCA's correspondence of 19 April 2018 as "general policy of the NTCA towards land claims" and chooses not to address it. That



correspondence, however, was merely the response of NTCA to the Commissioner's invitation to participate. The actual statement of detriment was provided to the Commissioner in correspondence from Ward Keller that included a statement from the former CEO of the NTCA dated 28 May 2018. The correspondence and statement was forwarded from the Commissioner's office to Mr Avery by email on 7 June 2018. That correspondence provides far more than general policy. It reflects industry-wide detriment in the form of:

- placing at risk pastoral industry and Northern Territory Government efforts to expand economic opportunity by promoting pastoral diversification;
- increasing investor insecurity resulting from uncertainty over the ability to reach reasonable and timely accommodation on access agreements for both beds and banks claims and the Mataranka Land Claim over portions of the Urapunga Stock Route

Mr Burke's statement also touched on disputes over the ability of pastoralists to retrieve cattle that had wandered onto Aboriginal or Aboriginal-controlled land. For your convenience a copy of that correspondence is attached as **Annexure 1**.

The lack of response from NLC should be seen as tacit acceptance that detriment exists and acknowledged as such in the detriment review.

We note that NLC does address detriment to individual properties with regard to non-pastoral uses at [31] of its submission. Its approach to detriment, however, is far too narrow and should be rejected. Detriment is not limited to quantifiable economic loss, be it direct loss or opportunity cost. New legal or practical restrictions which preclude or make more difficult certain types of economic opportunity are themselves a detriment and should be acknowledged and considered as such.

Yours faithfully  
**WARD KELLER**



**BRADLY TORGAN**  
Senior Lawyer  
Secretary: Stella Noor

Direct Line (08) 8946 2939  
Email [bradlytorgan@wardkeller.com.au](mailto:bradlytorgan@wardkeller.com.au)

cc: Elena Zola, Office of the Aboriginal  
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[Zola.elena@netwoek.pmc.gov.au](mailto:Zola.elena@netwoek.pmc.gov.au)

attachment

# Annexure 1

# Ward Keller

A legal practice conducted by Ward Keller Pty Ltd  
ACN 009 628 157, ABN 83 867 405 190

**E-MAILED**

Partners:  
Kevin Stephens  
Leon Loganathan  
Ashley Heath  
Michael Grove  
Teresa Hall  
Kaliopi Hourdas

Our ref: 20180019:BST

28 May 2018

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cc: Elena Zola, Office of the Aboriginal  
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[Elena.ZOLA@network.pmc.gov.au](mailto:Elena.ZOLA@network.pmc.gov.au)



**ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976**

**UPPER ROPER RIVER LAND CLAIMS COMPRISING MATARANKA AREA  
(NT PORTION 916) LAND CLAIM NO 129; WESTERN ROPER RIVER  
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**Pastoral diversification**

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21. I point out that this does not appear to be only my belief. The limited tangible benefit to the claimants at the expense of third parties was touched on by Commissioner Olney in his 2004 Upper Roper River Land Claims Report. In particular I note paragraph 73(e), '[t]he advantage derived from a grant of title would be confined to the recognition of the claimants' traditional attachments to the land and to the capacity to exercise some limited influence over recreational fishing and tourist activity in the region in the future'.
22. This investor insecurity may be magnified when a pastoral property is impacted by more than one land claim, as is the case here. Flying Fox, Lonesome Dove, and Big River stations are all impacted not just by the Upper Roper River Land Claims; they are also heavily impacted by Mataranka Land Claim No 69 (**Mataranka Land Claim**).
23. The Mataranka Land Claim is not a beds and banks claim. It is instead a claim for a portion of the Urapunga Stock Route that bisects those three stations, cutting off most of each of the respective properties from the Roper Highway. To the extent that the claimants in the Mataranka Land Claim are different from the claimants in the Upper Roper River Claims, there may be different or even competing interests between the respective claimants, making overall negotiations for access even more difficult for pastoral owners.

#### **Ability of pastoralists to retrieve cattle from Aboriginal lands**

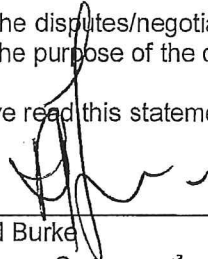
24. In response to land claims currently before the Aboriginal Land Commissioner, pastoralist members of the NTCA have raised the concern with me that they will be unable to retrieve cattle that have wandered onto a land claim area without permission from the land trust and the relevant land council. As the CEO of the peak body for the pastoral industry, with the ability to see an industry-wide picture, I believe that denial of access is more than just a hypothetical or remote concern.
25. I have direct, first-hand knowledge of several such disputes/negotiations that are not being resolved in a timely manner and that are adversely affecting pastoral operations. I do not, though, wish to name specific parties unless information about the parties and the disputes can remain confidential. Even though they have not been successful to date, I believe the parties are continuing to negotiate in good-faith to seek resolution. My concern here is that this statement will become a public document and that providing specificity as to the disputes, negotiations, and parties involved in a public forum would be counter-productive to resolution of many, if not all, of those matters.
26. I would be willing to provide specifics, however, if the Aboriginal Land Commissioner believes it will be helpful and is willing to place my additional testimony under seal and restrict its distribution and use in a manner that assures it will only be seen by those who



are parties to the disputes/negotiations and that it will not be communicated to any person other than for the purpose of the detriment review.

I declare that I have read this statement carefully before signing it and believe it to be true and correct.

Signed

  
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Paul Burke

Date

25-5-18