



CENTRAL LAND COUNCIL

**Submission to the Department of Industry, Tourism and Trade
Livestock and Other Legislation Amendment Bill 2024**

11 January 2024

To:

Chief Veterinary Officer
Biosecurity and Animal Welfare Branch
Department of Industry, Tourism and Trade
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By email: livestock.DITT@nt.gov.au

ACKNOWLEDGEMENT

Central Land Council acknowledges the traditional owners and native title holders of the Northern Territory who, with their ancestors, have been custodians and stewards of the Northern Territory for tens of thousands of years, and who have contributed significantly to the Northern Territory's pastoral industry.

A. EXECUTIVE SUMMARY

1. Central Land Council (**CLC**) submits that the Livestock and Other Legislation Amendment Bill 2024 (**Bill**) must not be introduced to Parliament without critical amendments. Progression of the Bill should be contingent upon further consultation with CLC.
2. In summary, CLC holds strong concerns that the Bill:
 - a. Purports to empower livestock owners to retrieve livestock from Aboriginal land¹ in a manner that is inconsistent with the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**Land Rights Act**).

Recommendation: Amend the Bill so that s 27 of the *Livestock Act 2008* (NT) (**Livestock Act**) does not apply to Aboriginal land. In the alternative, amend the Bill to specify that, where a livestock owner seeks to enter Aboriginal land for the purposes of retrieving its livestock, the livestock owner must reach an agreement with the relevant Aboriginal Land Trust² and Land Council prior to entry.

- b. Largely ignores the comprehensive suite of recommendations contained in CLC's submission to the Northern Territory Government (**Territory Government**) titled *Section 27 of the Livestock Act and related legislation (2022 CLC Submission)*.³

Recommendation: Amend the Bill to incorporate Recommendations 1, 4, 5, 6, and 7 of the 2022 CLC Submission.

- c. Enables property owners to unilaterally create a biosecurity management plan which would be invalid as against native title without an Indigenous Land Use Agreement (**ILUA**) pursuant to the *Native Title Act 1993* (Cth) (**Native Title Act**).

Recommendation: Amend the Bill to clarify that, in the absence of an ILUA, biosecurity management plans do not apply to native title holders of the area to which the biosecurity management plan relates.

- d. Permits property owners to create, at their sole discretion, a burdensome and impractical system of regulating entry to pastoral lease areas, contrary to Aboriginal interests in the area, disproportionate to any biosecurity risk posed by such access, and without any governmental oversight.

Recommendation: Amend the Bill to:

i) exempt native title holders, CLA residents, and other Aboriginal people entitled to access livestock areas and pastoral leases from the requirement to notify the property's nominated person;

ii) require assessment of a biosecurity management plan by the Department of Industry, Tourism and Trade (**DITT**) before it has statutory effect; and

¹ See *Land Rights Act* s 3(1).

² See *Land Rights Act* ss 3(1), 4, 5.

³ 9 May 2022.

iii) provide a mechanism for interested Aboriginal persons to seek merits review and/or Ministerial review of a biosecurity management plan.

3. CLC's view is that if the Bill is legislated in its current form, it is likely to disproportionately impact Aboriginal people. The Bill will also be vulnerable to legal challenge because it:
 - a. extends beyond the legislative power of the Northern Territory Parliament as provided by the *Land Rights Act*;
 - b. is incapable of concurrent operation with the *Land Rights Act*; and
 - c. allows for the doing of future acts (i.e. the creation of biosecurity management plans) which would be invalid as against native title pursuant to the *Native Title Act*.
4. It follows that DITT must work closely with CLC in order to:
 - a. remedy the above defects; and
 - b. avoid the deeply flawed consultation processes that it has undertaken in other recent areas of reform.
5. In the absence of these things, the Bill will fail to:
 - a. achieve its stated object⁴ and its purpose as stated by DITT;⁵
 - b. recognise the rights and interests of Aboriginal people in the Territory's pastoral estate as provided for in Commonwealth and Territory legislation.⁶

B. CLC'S INTEREST IN THE BILL

6. CLC is a statutory authority established under section 21 of the *Land Rights Act*. CLC has functions and duties under the *Land Rights Act*, including:
 - a. ascertaining and expressing the wishes and opinion of Aboriginals living in the area of the CLC's responsibility as to the management of Aboriginal land in that area and as to appropriate legislation concerning that land;
 - b. protecting the interests of traditional Aboriginal owners⁷ of, and other Aboriginals interested in, Aboriginal land in the area of the CLC's responsibility; and
 - c. assisting Aboriginals in the taking of measures likely to assist in the protection of sacred sites on land (whether or not on Aboriginal land) in the area of CLC's responsibility.⁸

⁴ Being to provide 'for the making and enforcement of biosecurity management plans': Bill cl 4.

⁵ Being 'to strengthen our biosecurity health capabilities including the Territory's emergency animal disease response': <https://haveyoursay.nt.gov.au/livestock-biosecurity#:~:text=Establishing%20the%20legislative%20framework%20for,to%20the%20Territory%27s%20agricultural%20sector.>

⁶ See generally *Land Rights Act*, *Native Title Act*, and *Pastoral Land Act*.

⁷ See *Land Rights Act* s 3(1).

⁸ *Land Rights Act* s 23(1).

7. CLC's region covers approximately 777,000 km² of the Northern Territory, of which approximately 417,000 km² is Aboriginal land.⁹
8. Additionally, CLC's region contains a large number of Aboriginal community living areas (**CLAs**) which have been excised from pastoral leases in accordance with the *Pastoral Land Act 1992* (NT) (**Pastoral Land Act**).¹⁰ CLA land is an estate in fee simple held by a community association formed under the *Associations Act 2003* (NT) or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).¹¹ CLC assists many CLA landholding bodies to grant interests in CLA land and meet their reporting obligations.
9. Finally, CLC is the recognised Aboriginal/Torres Strait Islander native title representative body (**NTRB**) under the *Native Title Act* for the southern region of the Northern Territory.¹² This includes a significant number of pastoral leases over which the Federal Court of Australia has made native title determinations.
10. NTRBs perform various assistance and facilitation functions.¹³ Such functions are carried out pursuant to service agreements between CLC and prescribed native title bodies corporate (**PBCs**). A table of pastoral leases in CLC's region over which native title determinations have been made and their respective PBCs is contained at Annexure A to this submission.
11. In making these submissions, CLC represents and has considered the interests of:
 - a. traditional Aboriginal owners of Aboriginal land in CLC's region;
 - b. CLA associations and residents;
 - c. native title holders of the pastoral leases in CLC's NTRB area; and
 - d. PBCs in CLC's NTRB area.
 (together, **CLC's constituents**).

C. CLC FEEDBACK ON THE DRAFT BILLS

12. CLC broadly supports biosecurity protection that is proportionately targeted towards genuine risks to pastoral enterprises. However, the Bill does not incorporate strong protections for Aboriginal peoples' traditional and statutory rights to access pastoral land in the Territory. This is a critical issue for CLC's constituents, which must be addressed prior to further progression of the Bill.

The Bill is partly inconsistent with the Land Rights Act

13. Clause 7 of the Bill proposes a new section 27 of the *Livestock Act 2008* (NT) (**Livestock Act**).¹⁴ Presently, where a livestock owner reasonably believes that its

⁹ See <https://www.clc.org.au/who-we-are/>.

¹⁰ See generally Part 8.

¹¹ *Pastoral Land Act* s 111(1).

¹² See s 203AD.

¹³ See *Native Title Act* s 203BB.

¹⁴ Bill cl 7.

livestock are on the property of someone else, the livestock owner may enter upon that property with 2 days' notice.¹⁵ The *Livestock Act* does not presently distinguish between Aboriginal land and other tenures.¹⁶

14. The Bill proposes to change this as follows:
 - a. the livestock owner must first make reasonable attempts to reach an agreement with the other property owner to retrieve the livestock;¹⁷
 - b. if an agreement is not reached, the livestock owner may enter that other property after giving at least 14 days' notice;¹⁸ and
 - c. if the other property is Aboriginal land, a copy of the notice must be given to the relevant Land Council¹⁹(together, the **proposed entry provisions**).
15. The proposed entry provisions are problematic because they:
 - a. do not require an agreement with the relevant Land Trust to enter Aboriginal land to retrieve livestock;
 - b. merely encourage the livestock owner to make 'reasonable endeavours' to reach an agreement to enter Aboriginal land and retrieve the livestock (but do not define the term 'reasonable endeavours'); and
 - c. do not require the livestock owner to obtain the consent of the Land Trust prior to entering Aboriginal land to retrieve livestock if the livestock owner has given 14 days' notice.
16. Accordingly, the proposed entry provisions are likely to be vulnerable to legal challenge. This is because:
 - a. The *Land Rights Act* provides that a person shall not enter or remain on Aboriginal land.²⁰ It is a criminal offence to do so.
 - b. In a proceeding for that offence, it is a defence if the person enters or remains on the land 'in performing functions, or exercising powers... under a law of the Northern Territory' or 'in accordance with... a law of the Northern Territory'.²¹
 - c. However, such a Territory law authorising the entry of persons onto Aboriginal land has effect only to the extent that it is capable of operating concurrently with the *Land Rights Act*.²² Further, the *Land Rights Act* only confers on the Northern

¹⁵ *Livestock Act* ss 27(1), 27(2)(a).

¹⁶ See s 4 regarding the definition of 'property'. It is therefore assumed that the *Livestock Act* purports to apply to Aboriginal land.

¹⁷ Bill cl 7, s 27(2).

¹⁸ Bill cl 7, s 27(3)(a).

¹⁹ Bill cl 7, s 27(4).

²⁰ s 70(1).

²¹ *Land Rights Act* ss 70(2A)(e), 70(2A)(h).

²² *Land Rights Act* s 73(1). See also *Land Rights Act* s 74(1).

Territory the power to make laws authorising or regulating the *entry* of persons on Aboriginal land, not to take actions such as mustering and/or retrieving cattle.²³

- d. Here, and as explored above, the proposed entry provisions purport to authorise entry onto and mustering and retrieving cattle from Aboriginal land; and
 - e. The Land Rights Act does not confer upon the Northern Territory the power to legislate for such purposes. The proposed entry provisions would alter the scheme of the *Land Rights Act* for conferring rights on others to enter and use Aboriginal land in a way that is inconsistent with, and unlawful under, that Act.²⁴
17. It follows that the proposed entry provisions would be incapable of concurrent operation with the *Land Rights Act*. The proposed entry provisions would therefore be of no effect to the extent that they purport to apply to Aboriginal land. A livestock owner seeking to rely on the proposed entry provisions to enter and retrieve livestock from Aboriginal land would contravene the *Land Rights Act* and be at risk of criminal and/or civil prosecution.²⁵

Recommendation: Amend the Bill so that s 27 of the *Livestock Act* does not apply to Aboriginal land. In the alternative, amend the Bill to specify that, where a livestock owner seeks to enter Aboriginal land for the purposes of retrieving its livestock, the livestock owner must reach an agreement with the relevant Aboriginal Land Trust and Land Council prior to entry.

The Bill largely ignores the comprehensive recommendations contained in the 2022 CLC Submission

- 18. Where a livestock owner's 'reasonable endeavours' have not led to an agreement, the proposed entry provisions require a livestock owner to give 14 days' notice before entering property to retrieve livestock.²⁶ The neighbouring landowner's consent is not required in these circumstances.
- 19. While this amendment is consistent with Recommendation 3 of the 2022 CLC Submission,²⁷ the Bill substantively ignores, and in some respects proposes the opposite of, the comprehensive suite of recommendations contained in that document. A copy of the 2022 CLC Submission is annexed at Annexure B to these comments.
- 20. We acknowledge that encouraging agreement-making is a step towards respecting the freehold rights in Aboriginal land. However, the proposed entry provisions simply do not go far enough. In failing to require a livestock owner to make an agreement with the relevant Land Trust prior to entering onto Aboriginal land to muster, the proposed entry provisions do not substantively improve the current law.
- 21. We accordingly re-iterate and maintain our position outlined in the 2022 CLC Submission.²⁸ In summary, the Bill's proposed entry provisions:

²³ s 73(1)(b).

²⁴ See, e.g., *Land Rights Act* ss 19, 70, 73.

²⁵ See also *Trespass Act 2023* (NT).

²⁶ Bill cl 7, s 27(3)(a).

²⁷ p 7. Recommendation 3 was a third alternative to recommendations 1 and 2 respectively.

²⁸ See Recommendations 1 and 2, pp 5-6.

- a. undermine the fee simple rights and interests of traditional owners to the advantage of the mere personal property rights of livestock owners;
- b. fail to recognise the inherent disadvantage of Land Trusts and CLC to respond to notices to enter and muster livestock, as well as attend the ensuing muster;
- c. fail to discourage unscrupulous livestock owners from allowing livestock to graze on Aboriginal land without authorisation then relying on section 27 notices to retrieve those livestock with few consequences; and
- d. significantly reduce traditional owners' power in negotiations for an agreement to enter and muster livestock from Aboriginal land.

Recommendation: Amend the Bill to incorporate Recommendations 1, 4, 5, 6, and 7 of the 2022 CLC Submission.

Biosecurity management plans would be invalid as against native title without an ILUA

- 22. The Bill proposes to create a legislative scheme for property owners to address the risks of 'biosecurity impacts'.²⁹ Generally speaking, this includes the ability for the owner of a property where livestock are kept to prepare or adopt a 'biosecurity management plan' for all or part of that property.³⁰
- 23. Where the property owner has adopted a biosecurity management plan, the Bill proposes to legislate requirements that a person seeking to enter that property:
 - a. notify the nominated person for that property of the entry;³¹ and
 - b. comply with that biosecurity management plan (noting that it would be an offence for a person to intentionally or recklessly fail to comply with a biosecurity management plan).³²
- 24. These provisions do not provide a carve-out for native title holders or other Aboriginal people. This is notable in light of a specific carve-out in the Bill's requirement for consent to enter the property.³³
- 25. CLC's view is that the creation of a biosecurity management plan would be an invalid future act for the purposes of the *Native Title Act*. Consequently, an ILUA would be required in order for a biosecurity management plan to bind native title holders. This is because:

²⁹ Bill cl 6, s 16A.

³⁰ Bill cl 6, s 16B. The provisions would appear to apply to an 'owner' of a registered property on which livestock are kept: see *Livestock Act* s 15(2). However, we note that the definition of 'owner' in s 4 of the *Livestock Act* is much broader than the conventional understanding of that term (being the owner of the fee simple estate of the relevant land).

³¹ Bill cl 6 s 16E.

³² Bill cl 6, s 16G. We also note that the Bill seeks to establish a requirement for a person seeking to enter that property to have the consent of the 'nominated person' for the property. This provision is however expressed to not apply to 'a person who, under a law of the Territory or the Commonwealth, has a right to enter [that property]': Bill cl 6 ss 16D(1)-(2). CLC's view is that this carve-out would extend to native title holders pursuant to the *Native Title Act* and the *Validation (Native Title Act) 1994 (NT)*.

³³ See the discussion at fn 32 above.

- a. the requirements in proposed sections 16E and 16G of the Bill would affect the exercise and/or enjoyment of native title rights and interests because they are presently not subject to such limitations;³⁴
 - b. it follows that making of a biosecurity management plan would be a ‘future act’;³⁵ and
 - c. a biosecurity management plan would not fall within the categories prescribed by Part 2 Division 3 of the *Native Title Act*.
26. DITT appears to share the view that the legal application of biosecurity management plans to native title holders is at best uncertain.³⁶ This must be remedied prior to Parliament’s consideration of the Bill.

Recommendation: Amend the Bill to clarify that, in the absence of an ILUA, biosecurity management plans do not apply to native title holders of the area to which the biosecurity management plan relates.

The Bill will permit livestock owners to create a burdensome, impractical and uncertain system of regulating entry to biosecurity management plan areas without governmental oversight

27. Where a property owner adopts or prepares a biosecurity management plan, the Bill proposes that:
- a. biosecurity management plans must only contain ‘reasonable measures’ to address the risk of biosecurity impacts. A provision of a biosecurity management plan that is not ‘reasonable’ is taken to not form part of that plan;³⁷
 - b. a sign must be affixed to public access points to the property to which the plan applies. The sign must contain certain prescribed information including, among other things, a statement to the effect that a biosecurity management plan applies to that property;³⁸
 - c. the nominated person for the property must be notified of entry to the property;³⁹
 - d. a biosecurity management plan must be complied with upon entry to the area to which it applies;⁴⁰ and
 - e. a person commits the offence of aggravated trespass (carrying a penalty of 60 penalty units or 12 months’ imprisonment) if that person enters a ‘place of primary production’ (including a livestock area and/or pastoral lease) without authority.⁴¹

³⁴ See *Native Title Act* ss 226(2)(b)-(3) (concerning the definition of ‘act’), 227 (concerning the definition of ‘act affecting native title’).

³⁵ See *Native Title Act* s 233(1).

³⁶ See *FAQs – draft Livestock and other Legislation Amendment Bill 2024* p 7, which states that native title holders ‘may’ be required to comply with the proposed biosecurity measures.

³⁷ Bill cl 6, s 16B(1)-(2).

³⁸ Bill cl 6, s 16C.

³⁹ See fn 31 and accompanying text.

⁴⁰ See fn 32 and accompanying text.

⁴¹ Bill cl 37. See also *Trespass Act 2023* (NT) s 13.

28. These elements of the Bill do not accommodate the interests of CLC's constituents. This is because:
- a. there would be no requirement that DITT or any other Territory Government department review the provisions of a biosecurity management plan to determine whether they are reasonable prior to the plan having statutory effect. Consequently, there would be no legal avenue for the determination of what in fact constitutes a 'reasonable measure';
 - b. CLC's constituents do not always access prospective biosecurity management areas via public access points, and therefore may not be aware of a sign stating that a biosecurity management plan applies;
 - c. there is no requirement that the sign be in plain English or in local Aboriginal languages; and
 - d. CLC's constituents may not have the means to notify the nominated person for a property of their entry to that property. For example, there may be a lack of mobile phone reception in the area, or the homestead may not be in close proximity to the intended visit area or relevant CLA.
29. The Bill would therefore constrain the exercise of the 'full and free' rights that the *Pastoral Land Act* reserves in favour of Aboriginal people.⁴² This must be resolved as a matter of urgency.
30. Further, the proposed aggravated trespass offence exposes CLC's constituents to serious risk of undue prosecution for exercising their rights to access livestock areas and/or pastoral leases either under the *Pastoral Land Act*, *Native Title Act*, or otherwise. This is particularly problematic in circumstances where it is at best uncertain whether the requirement to notify the nominated person of entry to the property applies to native title holders.⁴³ This is only amplified by the fact that proposed section 16G(3) provides that strict liability applies to a person's presence in a 'biosecurity management area'.
31. Such offences are disproportionate to the risk of CLC's constituents causing biosecurity impacts, and hence go far beyond the aims of the Bill itself. Relevantly, the Bill FAQs document states:

Changes to the Territory's Trespass laws are being proposed to capture *more serious trespass offending that is deliberate and pose a heightened biosecurity, economic and safety risk* to family producers, businesses and the Territory's agricultural industries in general. Specific aggravated agricultural land (primary production) trespass offences are now a feature across most jurisdictions in recognition of the complex and evolving biosecurity disease threats and the serious potential biosecurity impacts with regards to *deliberate and unauthorised entry to agricultural production land*. The changes to the Trespass laws *will not impact on the general public including vulnerable people* or places [emphasis added].⁴⁴

⁴² See s 38(1)(n).

⁴³ See fn 36 and accompanying text.

⁴⁴ p 10.

32. It is evident from the above comments that the Bill requires significant amendments prior to parliamentary consideration.

Recommendation: Amend the Bill to:

- i) exempt native title holders, CLA residents and other Aboriginal people entitled to access livestock areas and pastoral leases from the requirement to notify the property's nominated person;
- ii) require assessment of a biosecurity management plan by DITT before it has statutory effect; and
- iii) provide a mechanism for interested Aboriginal persons to seek merits review and/or Ministerial review of a biosecurity management plan.

D. PROGRESSION OF THE BILLS MUST BE DELAYED

33. In light of the Bill's defects, including its potentially significant and disproportionate ramifications for CLC's constituents, DITT must work closely with CLC before progressing the Bill.
34. DITT must avoid the mistakes made in recent consultations undertaken in relation to other areas of legislative reform. This includes consultations undertaken by DITT itself as well as other Territory Government departments, including:
- a. the Environmental Protection Legislation Amendment (Mining) and Legacy Mines bills. These bills were legislated merely one month after receipt of substantive feedback from 15 industry stakeholders, including a detailed joint submission from CLC and Northern Land Council (**NLC**), and one day after the relevant Ministers met with CLC and NLC to explain how their feedback had been incorporated;
 - b. legislative amendments following the release of the Minerals Development Taskforce final report; and
 - c. the formation of the Georgina-Wiso Water Allocation Plan and the draft Western Davenport Water Allocation Plan.
35. The tokenistic nature of these consultations undermines the duties of transparency and accountability that are inherent to parliamentary and executive processes.
36. CLC has repeatedly expressed to the relevant departments and Ministers its dissatisfaction with these consultations. Those flaws must not be repeated here.
37. We consequently urge DITT to pause, work with the Land Councils, and undertake fulsome consultation on the Bills throughout the first half of 2024.

Annexure A – Pastoral Lease Native Title Determinations in CLC’s Region

Pastoral Lease (PPL)	Native Title Prescribed Body Corporate (PBC)
Bushy Park PPL	Akwerrperl Aboriginal Corporation
Napperby PPL	Alherramp Ilewerr Mamp Arrangkey Tywerl Aboriginal Corporation
Stirling & Neutral Junction PPLs	Eynewantheyne Aboriginal Corporation
Huckitta PPL	Huckitta Aboriginal Corporation
Pine Hill (east) PPL	Ilkewartn Ywel Aboriginal Corporation
Lake Nash & Georgina Downs	Ilperrelhelam Aboriginal Corporation
Jinka & Jervois PPLs	Ingkekure Aboriginal Corporation
Aileron PPL	Irretyepwenty Ywentent Pwert Aboriginal Corporation
Curtin Springs, Lyndervale and Eridunda PPLs (Karinga Lakes)	Iyangka Kularta Aboriginal Corporation
Davenport Range National Park	Iytwelepwenty Aboriginal Corporation
Wave Hill PPL	Jinparrak Aboriginal Corporation
Ammaroo, Murray Downs, Elkedra & Derry Downs PPLs (Sandover)	Kaytetye Alyawarr Awenyerraperte Ingkerrwenh Aboriginal Corporation
Neutral Junction (Crawford Range)	Kaytetye Tywerate Arengge Aboriginal Corporation
Nolan Bore	Kwaty Aboriginal Corporation
Limbunya PPL	Malapa Aboriginal Corporation
Karundi PPL	Mitata Aboriginal Corporation
Singleton PPL	Mpwerempwer Aboriginal Corporation
Mt Denison PPL	Mt Denison Aboriginal Corporation
Mt Doreen PPL	Ngalyia Aboriginal Corporation
Ooratippra PPL	Ooratippra Aboriginal Corporation
Pine Hill West PPL	Pine Hill West Aboriginal Corporation
Glen Helen PPL	Pmarra Tjurritja Alturla Aboriginal Corporation
Maryvale PPL	Rodinga Aboriginal Corporation
Tennant Creek PPL	Ngurramarla Aboriginal Corporation

Pastoral Lease (PPL)	Native Title Prescribed Body Corporate (PBC)
Henbury PPL	Twenga Aboriginal Corporation
New Crown & Andado PPLs	Tyatyekwenhe Aboriginal Corporation
Mt Riddock PPL	Tywele Aboriginal Corporation
Narwietooma PPL	WALA Aboriginal Corporation
Phillip Creek PPL	Warlmanpa Warumungu Aboriginal Corporation
Newhaven PPL	Yankanjini Aboriginal Corporation
Umbeara, Victory Downs, Mt Cavenagh & Mulga Park PPLs (Victory Downs)	Yankunytjara Matutjara Aboriginal Corporation

Annexure B – 2022 CLC Submission



CENTRAL LAND COUNCIL

Central Land Council

Submission to the Northern Territory Government

***Section 27 of the Livestock Act 2008 and related
legislation***

9 May 2022

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Summary of recommendations

The CLC makes the following recommendations in relation to section 27 of the *Livestock Act 2008*, together with related but more general amendments to the *Livestock Act 2008* and other related legislation:

Recommendation 1

Amend section 27 so that it does not apply to Aboriginal land.

Recommendation 2

- 1.1 If recommendation 1 is not accepted, then amend section 27 so that a person who reasonably believes their livestock are on another's land, must first reach an agreement with the owner of the land, before entering on the land to retrieve the livestock.
- 1.2 Ensure the penalty for breach of section 27 is sufficient to encourage compliance.

Recommendation 3

- 3.1 If recommendations 1 and 2 are not accepted, amend section 27 so that:
 - (a) a livestock owner must provide the owner of land at least 14 days' notice prior to entry;
 - (b) the livestock owner must comply with all reasonable directions of the landowner in respect of its entry on the land, including while on the land; and
 - (c) within 2 days following departure from the land, the livestock owner must provide to the land owner:
 - (i) the number and class of any cleanskins removed from the land and an explanation as to why ownership is claimed over those cleanskins;
 - (ii) waybills recording the number, class and branding of the livestock removed;
 - (iii) a description of the areas entered upon; and
 - (iv) any other information reasonably requested by the landowner to establish the area of the land the livestock owner entered upon and the livestock it removed.
- 3.2 Ensure the penalty for breach of section 27 is sufficient to encourage compliance.

Recommendation 4

- 4.1 Amend section 27 so that its application is limited to its intent, namely to retrieve *stray* livestock and not as a mechanism that enables a livestock owner to enter upon land to muster large numbers of livestock that have been unlawfully grazing on another's land or to otherwise undertake speculative musters of unbranded livestock.
- 4.2 Amend section 27 so that a person cannot muster unbranded livestock except unbranded progeny of branded wet mothers.
- 4.3 Ensure the penalty for breach of section 27 is sufficient to encourage compliance.

Recommendation 5

Amend the *Livestock Act* to include a positive requirement for livestock owners to keep their livestock within their boundaries.

Recommendation 6

Amend the *Livestock Act* to clarify that ownership of weaned cleanskins runs with the land.

Recommendation 7

Modernise the *Pounds Act 1930* so that a landowner can impound the livestock themselves and convert those livestock into cash, to be then dealt with between the parties.

Introduction and context

The Central Land Council (**CLC**) welcomes the opportunity to provide a submission in relation to section 27 of the *Livestock Act 2008* (NT).

References to “section 27” in this submission are references to section 27 of the *Livestock Act 2008* (NT).

The CLC is a Commonwealth corporate entity established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (**ALRA**) and is also the native title representative body for the southern part of the Northern Territory, under the *Native Title Act 1993*.

The CLC is led by a representative body of 90 Aboriginal people elected from communities in the southern half of the Northern Territory, which covers almost 777,000 square kilometres and has an Aboriginal population of more than 18,000.

The CLC has statutory responsibilities to ascertain, represent and protect the rights and interests of Aboriginal people living in the CLC region. One of the CLC’s central roles is to protect the rights of Aboriginal people with an interest in Aboriginal land, by assisting constituents to make land claims, negotiate agreements with third parties, protect sacred sites and utilise land for other financial and non-financial resources. The CLC also administers programs and provides expertise in relation to natural and cultural resource management, remote enterprise development, remote employment, community development, good governance, land administration and land use agreements. When Aboriginal land (or a perpetual pastoral lease) is used by Aboriginal people for pastoral activities, the CLC usually provides legal and management assistance.

Discussion of recommendations

The CLC makes the following submission and recommendations in relation to the *Livestock Act* and other legislation:

1. Exclude Aboriginal land from the operation of section 27

The CLC’s principal recommendation is that section 27 be amended to expressly exclude its operation on Aboriginal land under ALRA.

Such an amendment is consistent with the purpose and intent of ALRA, Commonwealth legislation enacted to protect the traditional rights and interests of traditional owners in their land.

The current wording of section 27 undermines the fee simple rights and interests of traditional owners to advantage the mere personal property rights of livestock owners. While such a preference may be more understandable when a livestock owner enters upon the leasehold interest of a neighbouring pastoral lessee, it is more difficult to support when fee simple rights are undermined. This is particularly so when it is considered that a livestock owner’s issue of a section 27 notice makes lawful entry onto Aboriginal land which would ordinarily be an offence under ALRA, as well as constituting trespass.

The proposed amendment will also help recognise the inherent disadvantage of Aboriginal Land Trusts in responding to and monitoring the deployment of section 27 notices affecting Aboriginal land. The CLC represents all Aboriginal Land Trusts in its region and has responsibility for administering Aboriginal land totalling over 417,000 square kilometres in size.

Unlike a pastoral leaseholder, who is generally responsible for one property, often only several thousand square kilometres in size, it is almost impossible for the CLC to, at any one time, be in a position to monitor the number of livestock grazing on the huge expanse of land in its region. Furthermore, a pastoral leaseholder manages active livestock operations on its property and is therefore generally in a position to respond to a section 27 notice by attending and monitoring a

neighbour's muster on their property. In contrast, it is almost impossible for the CLC to ensure an employee or agent can be present to observe a muster on Aboriginal land. This is principally because of the limited resources of the CLC, the large area it administers and the abrupt two day notice period given by a livestock owner under section 27. As a result, the observation safeguard built into section 27 provides little to no protection to Aboriginal Land Trusts.

With this in mind and particularly with drought conditions that have prevailed in recent years, we are increasingly observing unscrupulous livestock owners allowing livestock to graze on Aboriginal land and then relying on the section 27 mechanism to retrieve those livestock with few consequences and certainly avoiding civil consequences or penalties for entry onto Aboriginal land, under ALRA.

The natural consequence of removing Aboriginal land from the application of section 27 is that it will require a livestock owner to first make an agreement with the Aboriginal Land Trust before entering upon the land to retrieve its trespassing livestock. In turn, this will enable the CLC to negotiate arrangements to minimise potential damage to sacred sites and obtain compensation for unauthorised grazing, rather than having to pursue a livestock owner for such compensation after the fact, which prejudices an Aboriginal Land Trust's negotiating position and in our experience, makes it extremely difficult to agree terms with the livestock owner. Furthermore, it will better motivate a livestock owner to control and take care of its herd, including adequately maintaining fencing. If this recommendation is adopted, then the CLC would prepare a set of template agreements which could reduce the negotiation time and provide consistency for pastoralists. ALRA would otherwise apply to the negotiation and exchange of the agreement.

Recommendation 1

Amend section 27 so that it does not apply to Aboriginal land.

2. Agreement required to enter upon neighbour's land

If recommendation 1 is not accepted, then we submit that section 27 be amended so that a livestock owner may only enter upon a neighbour's land after an agreement for access has been reached between the parties.

To support this recommendation, we repeat the reasoning set out under recommendation 1 and note again that an agreement would respect the fee simple rights of Aboriginal Land Trusts, enable the CLC to ensure sacred sites are better protected and ensure that compensation for unauthorised grazing can be negotiated on a level playing field.

Given the amount of benefit a livestock owner can derive from unauthorised grazing on Aboriginal land (and other land), adequate penalty provisions must also apply for non-compliance to ensure the more attractive option for a livestock owner is to comply with the requirements of the section.

Recommendation 2

- 2.1 If recommendation 1 is not accepted then amend section 27 so that a person who reasonably believes their livestock are on another's land must first reach an agreement with the owner of the land, before entering on the land to retrieve the livestock.
- 2.2 Ensure the penalty for breach of section 27 is sufficient to encourage compliance.

3. Increase notice period and require provision of information to land owner

If recommendations 1 and 2 are not accepted, then we submit that section 27 be amended so that:

1. a livestock owner must provide the owner of land at least 14 days' notice prior to entry;
2. the livestock owner must comply with all reasonable directions of the landowner in respect of its entry on the land, including while on the land; and
3. within 2 days following departure from the land, the livestock owner must provide to the land owner:
 - (a) the number and class of any cleanskins removed from the land and an explanation as to why ownership is claimed over those cleanskins;
 - (b) waybills recording the number, class and branding of the livestock removed;
 - (c) a description of the areas entered upon; and
 - (d) any other information reasonably requested by the landowner to establish the area of the land the livestock owner entered upon and the livestock it removed.

The extended notice provision will allow the CLC greater time to assemble resources to monitor a potential muster on Aboriginal land. It also better respects the fee simple interest of Aboriginal Land Trusts and the fact that, in any other circumstances, entry onto Aboriginal land without consent would constitute an offence under ALRA, as well as trespass.

Requiring the livestock owner to comply with reasonable directions of the landowner will enable the CLC to put measures into place to help protect sacred sites and other important areas on Aboriginal Land Trusts.

In respect of the requirement for the livestock owner to provide certain information to the landowner within 2 days of departure, we again repeat the reasoning in recommendation 1 and in particular, that relating to ensuring a level playing field for Aboriginal Land Trusts to negotiate compensation for unauthorised grazing on Aboriginal land.

Given the amount of benefit a livestock owner can derive from unauthorised grazing on Aboriginal land (and other land), adequate penalty provisions must also apply for non-compliance to ensure the more attractive option for a livestock owner is to comply with the requirements of the section.

Recommendation 3

- 3.1 If recommendations 1 and 2 are not accepted, amend section 27 so that:
- (a) a livestock owner must provide the owner of land at least 14 days' notice prior to entry;
 - (b) the livestock owner must comply with all reasonable directions of the landowner in respect of its entry on the land, including while on the land; and
 - (c) within 2 days following departure from the land, the livestock owner must provide to the land owner:
 - (i) the number and class of any cleanskins branded prior to being removed from the land and an explanation as to why ownership is claimed over those cleanskins;

- (ii) waybills recording the number, class and branding of the livestock removed;
- (iii) a description of the areas entered upon; and
- (iv) any other information reasonably requested by the landowner to establish the area of the land the livestock owner entered upon and the livestock it removed

3.2 Ensure the penalty for breach of section 27 is sufficient to encourage compliance.

4. Amend section 27 so that its application is limited to its intent

The *Livestock Act 2008* commenced in 2009, with the repeal of the *Brands Act* and several other pieces of legislation. There appears to be no provision equivalent to section 27 in the repealed legislation, nor have we been able to locate equivalent provisions in other state and territory legislation.

Furthermore, Hansard reveals no second reading speech for the bill nor is there an explanatory memorandum available. Accordingly, we can only speculate on the intent of Parliament in introducing the section.

The reference to “stray livestock” in the heading to the section strongly suggests that the provision was intended to act as a means for an owner to retrieve *lost* stock. A prudent livestock owner does not allow more than a small number of stock to be lost at any one time. Despite this, we are increasingly seeing large numbers of livestock being removed from Aboriginal Land Trusts under section 27 notices. We have observed that section 27 notices are also being used as a means for an owner to undertake speculative musters, rather than simply to retrieve livestock that an owner knows has wandered onto a neighbour’s property.

In April 2022, a disputed muster by Windbox Pty Ltd on the Daguragu and Hooker Creek Aboriginal Land Trusts in April 2022, resulted in 147 of Windbox’s branded livestock and close to 300 cleanskins being removed. This is a striking example of how a livestock owner used a section 27 notice to justify entry on to Aboriginal land to collect a large number of livestock, many of which it did not own or, at best, owed agistment fees in respect of. The stock squad is investigating the matter. However it would have been more effective and efficient if the CLC could have stopped the speculative muster by relying on statute to prevent the entry, rather than remedying wrongdoing after the fact.

We submit that section 27 was only ever intended to cover circumstances where a small number of livestock may have wandered across a boundary, not to permit livestock owners to collect large numbers of livestock they are aware have been grazing on a neighbour’s property, often for extended periods of time. Nor was it intended to be used as a mechanism to undertake speculative musters on a neighbour’s property.

Accordingly, we recommend that section 27 be re-designed so that the notice provision may only be used by a livestock owner to retrieve small numbers of stray livestock that it can conclusively demonstrate that it owns. The section should make plain that a person cannot muster unbranded livestock except unbranded progeny of branded wet mothers. This amendment would apply more statutory pressure on a livestock owner to keep its livestock contained within its boundaries. We would welcome the opportunity to provide specific recommendations on wording.

Given the amount of benefit a livestock owner can derive from unauthorised grazing on Aboriginal land (and other land), adequate penalty provisions must also apply for non-compliance to ensure the more attractive option for a livestock owner is to comply with the requirements of the section.

Recommendation 4

- 4.1 Amend section 27 so that its application is limited to its intent, namely to retrieve *stray* stock and not as a mechanism that enables a livestock owner to enter upon land to muster large numbers of livestock that have been unlawfully grazing on another's land or to otherwise undertake speculative musters of unbranded livestock
- 4.2 Amend section 27 so that a person cannot muster unbranded livestock except unbranded progeny of branded wet mothers.
- 4.3 Ensure the penalty for breach of section 27 is sufficient to encourage compliance.

5. Positive obligation to contain livestock

We recommend that the *Livestock Act* be amended to include a positive obligation on a livestock owner to keep their livestock contained on their own land or lease.

The amendment would mirror common law obligations and make it plain to livestock owners what their obligations are in respect of controlling their livestock.

Recommendation 5

Amend the *Livestock Act* to include a positive requirement for livestock owners to keep their livestock within their boundaries

6. Clarify ownership of unbranded livestock

We submit that the lack of clarity around ownership of unbranded livestock contributes to the misuse of section 27 notices.

Some legislation in the Northern Territory¹ and other jurisdictions² makes clear that, once weaned, ownership of wild, unbranded livestock runs with the land. However, the *Livestock Act* is not explicit and any ambiguity leads to confusion (at best) and conflict (at worse).

The CLC's experience is that the lure of claiming cleanskins is driving speculative musters. This behaviour takes advantage of confusion and creates conflict. It would be avoided by amendment of the *Livestock Act* to clarify that weaned, unbranded livestock are owned by the owner of the land on which they are depastured.

Recommendation 6

Amend the *Livestock Act* to clarify that ownership of weaned cleanskins runs with the land.

¹ See, for example, section 99, *Crown Lands Act 1992* (NT) in relation to unbranded bovine livestock over the age of 12 months that are remaining or feeding on Crown lands. Similarly, the *Livestock Regulations 2009* (NT) require branding of all livestock over 8 months with the brand of the property on which they are depastured.

² See, for example, section 225, *Land Act 1958* (Vic) in relation to unbranded wild livestock over the age of 12 months depastured on Crown land

7. Modernise the Pounds Act 1930

The *Pounds Act 1930* is ineffective because arguably, regional councils are not resourced sufficiently to manage livestock once impounded. It is also unclear whether facilities exist large enough to be used to impound any significant number of livestock.

Accordingly, we recommend that the *Pounds Act 1930* be modernised to set out a mechanism whereby a landowner may itself impound stray livestock on its property and convert those livestock into cash, with the landowner entitled to deduct its reasonable costs from the proceeds, before remitting the balance to the livestock owner, provided all outstanding claims between the parties have been resolved. Safeguards could be included in the provision, including a requirement that the landowner give the livestock owner at least 2 days' notice to collect its livestock prior to conversion and a requirement that converted livestock be sold at open market.

While we suggest that taking such steps would be a last resort for most landowners, it would provide some greater comfort for Aboriginal Land Trusts dealing with continued unauthorised grazing on Aboriginal land as well as encouraging livestock owners to better control their animals.

Recommendation 7

Modernise the *Pounds Act 1930* so that a landowner can impound the livestock themselves and convert those livestock into cash, to be then dealt with between the parties