

EXAMPLE
PASTORAL INDIGENOUS LAND USE AGREEMENT

**TO ASSIST VOLUNTARY NEGOTIATIONS BETWEEN PASTORAL LESSEES,
NATIVE TITLE CLAIM GROUPS AND THE STATE**

SOUTH AUSTRALIAN FARMERS FEDERATION INC.



ABORIGINAL LEGAL RIGHTS MOVEMENT INC.



**THE STATE OF SOUTH AUSTRALIA
INDIGENOUS LAND USE AGREEMENT
NEGOTIATION TEAM**



December 2004

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PASTORAL INDIGENOUS LAND USE AGREEMENT (“Agreement”)

BETWEEN:

[**THE NATIVE TITLE CLAIM GROUP**] represented by [.....] (“the Named Applicants”)

AND:

[**THE PASTORAL LESSEE/S**] (“the Pastoral Lessee”)

AND:

THE STATE OF SOUTH AUSTRALIA (“the State”)**PREAMBLE**

- A. The Pastoral Lessee, the Native Title Claim Group, and the State recognize that this Agreement cannot determine, in a legally binding way, the existence or otherwise of native title over the Land. Only a Court can make a determination of native title. However, the parties recognize that this Agreement, if registered as an Indigenous Land Use Agreement (“ILUA”) under the *Native Title Act 1993*, will bind the parties for the term of the Agreement in relation to the matters dealt with regardless of the content or extent of native title rights that might otherwise be exercised by the Native Title Claim Group.
- B. The Pastoral Lessee is the lessee of the Land. The Pastoral Lessee has rights conferred by the Pastoral Lease and under the *Pastoral Land Management and Conservation Act, 1989* and is entitled to operate and develop the Land pursuant to those rights for their and their successors’ benefit.
- C. The Native Title Claim Group is registered under the *Native Title Act* as the native title Applicant over the Land. The Native Title Claim Group has rights in the State of South Australia pursuant to the *Pastoral Land Management and Conservation Act* and other State and Commonwealth legislation. The Native Title Claim Group wishes to continue to exercise their traditional rights and interests on the Land including preserving and protecting areas of cultural significance.
- D. The State has a public and statutory responsibility to ensure pastoral land covered by the *Pastoral Land Management and Conservation Act* is managed in a sustainable way, incorporating economic, social, cultural and environmental considerations.
- E. The Pastoral Lessee, the Native Title Claim Group and the State recognize the respective rights, interests and responsibilities that each party has in relation to the land and have agreed to enter into this Agreement in order to manage, to the extent set out in this Agreement, the exercise of their respective rights, interests and responsibilities in relation to the Land.
- F. The State has a commitment to:-
- assisting Aboriginal people to build strong communities and to effectively participate in economic, cultural, social and other pursuits; and
 - assisting pastoral lessees to conduct sustainable pastoral enterprises.

NOW IT IS AGREED as follows:-**Definitions and Interpretations**

Words in capitals will be defined. Other usual rules of legal interpretation to be included.

Formation of Body Corporate [where applicable]

1. Upon execution of this Agreement, the Native Title Claim Group shall take such steps as are necessary to incorporate a Native Title Body Corporate pursuant to the *Native Title Act*, which body corporate shall be deemed to be a party to this Agreement.

Area of agreement

2. This Agreement applies to the ILUA Area as defined and as shown on plan GP xx/2005 appended as an Attachment to this Agreement (“the Land”).

Agreement to bind Native Title Claim Group

3. The Named Applicants warrant and represent that they have authority to speak for the Land and have obtained all authorisations, consents and approvals necessary to enter into this Agreement, including authorisation from the Native Title Claim Group in accordance with Section 251A of the *Native Title Act*.
4. Pursuant to section 24EA of the *Native Title Act* this Agreement, once registered, binds the Native Title Claim Group and all persons holding native title over the Land.

Access and undertaking Traditional Activities

5. Subject to this Agreement, the Native Title Claim Group has rights to conduct Traditional Activities on the Land.
6. For the purposes of this Agreement, Traditional Activities includes:-
 - 6.1. hunting, gathering and using the products of the land for traditional purposes, such as food, medicines, tobaccos, timber, stone, ochre and resin, as well as accessing and using water on the land for traditional purposes;
 - 6.2. engaging in cultural activities such as conducting ceremonies, holding meetings, teaching the physical and spiritual attributes of places, and participating in cultural practices relating to birth and death;
 - 6.3. accessing, maintaining and protecting sites of significance on the land;
 - 6.4. staying on the land, including camping, erecting shelters and moving about on the land;
 - 6.5. the traditional pursuits referred to in section 47(1) of the *Pastoral Land Management and Conservation Act*; and

doing of things incidental to such Traditional Activities.

7. Subject to this Agreement, no Aboriginal people other than the Native Title Claim Group have access or other rights under section 47(1) of the *Pastoral Land Management and Conservation Act*.

Native Title Claim Group and Native Title Claim Group Invitees

8. The Native Title Claim Group may give permission to Native Title Claim Group Invitees to enter the Land to carry out or be involved in Traditional Activities pursuant to this Agreement.

9. The Native Title Claim Group is responsible for the conduct of Native Title Claim Group members and Native Title Claim Group Invitees while on the Land. The Native Title Claim Group is responsible for compliance by their members and Native Title Claim Group Invitees with the terms of this Agreement, and any reasonable direction given by the Pastoral Lessee pursuant to Clause 14.

Notification

10. Before entering the Land:

- 10.1. the Native Title Claim Group, or any member of the Native Title Claim Group; or
 10.2. a Native Title Claim Group Invitee where it is agreed between the Native Title Claim Group and the Pastoral Lessee:

shall, wherever reasonably practical, give at least [x] hours oral or written notice to the Pastoral Lessee of their intention to enter the Land ("Notice").

11. Where a large group of Native Title Claim Group members is proposing to undertake Traditional Activities on the Land then the Native Title Claim Group will give as much additional notice as is practicable.

12. The Notice shall inform the Pastoral Lessee of:-

- 12.1. the names of contact people for the visiting group;
 12.2. the approximate number of people intending to enter the Land;
 12.3. the places on the Land to be visited;
 12.4. the approximate length of stay on the Land;
 12.5. information on the number and the role of the non-Native Title Claim Group people entering the land;
 12.6. if camping is proposed, the approximate camping location/s;
 12.7. if hunting is proposed, names of any licensed firearm holders who intend to hunt; and
 12.8. if a ceremony or other activity is to occur where privacy is paramount, the approximate time and location of that ceremony or activity.

Directions of Pastoral Lessee

13. The Pastoral Lessee and the Native Title Claim Group recognise that a good cooperative relationship between them will enhance the ability of the Pastoral Lessee to carry out pastoral activities on the Land and the ability and the confidence of the Native Title Claim Group to enjoy Traditional Activities on the Pastoral Lease.
14. While the Native Title Claim Group or Native Title Claim Group Invitees are on the Land, the Pastoral Lessee may make reasonable directions that relate to safety or the reasonable operation of pastoral activities. Where possible these directions shall not interfere with the Native Title Claim Group undertaking Traditional Activities on the Land.
15. The Native Title Claim Group recognises the need to follow reasonable directions of the Pastoral Lessee in relation to safety or the operation of pastoral activities, and to seek additional information where required to avoid any potential misunderstanding of a direction.
16. The directions referred to in clause 14 may be about matters including:-
- 16.1. where not to camp;
 16.2. temporary restrictions to an area;
 16.3. use (including closure) of roads and tracks;
 16.4. the lighting and extinguishing fires;

- 16.5. control of any animal or animals;
- 16.6. where not to hunt using firearms; and
- 16.7. conservation of soil, flora, fauna or other environmental matters.

17. If there is a dispute with respect to a direction, then the dispute resolution process set out in clause 64 shall apply, but in the meantime the Native Title Claim Group will comply with the direction.
18. If compliance with a direction would require a breach of Aboriginal law and custom, the Native Title Claim Group will immediately advise the Pastoral Lessee, and the Native Title Claim Group and the Pastoral Lessee will discuss and consider in good faith alternative options.

Protection of party property

19. Except as agreed by the Pastoral Lessee, while on the Land the Native Title Claim Group will ensure that members of the Native Title Claim Group and Native Title Claim Group Invitees:-
- 19.1. do not intentionally or recklessly interfere with stock on the Land;
 - 19.2. do not interfere with station infrastructure and facilities including buildings, vehicles, fences, watering points, plant and equipment, improvements and other pastoral property; and
 - 19.3. do not use out stations and/or infrastructure without the consent of the Pastoral Lessee.
20. Except as agreed by the Native Title Claim Group, while on the Land the Pastoral Lessee, and the State, will ensure that they and their invitees do not use or interfere with the property of the Native Title Claim Group.

Gates

21. If the Pastoral Lessee has the approval of the State to lock any gates across tracks on the Land then the Pastoral Lessee shall ensure that the Native Title Claim Group has a key, or has ready access to a key, to such gates.
22. Unless otherwise agreed or directed by the Pastoral Lessee, all gates on the Land must be left as they are found by persons accessing the Land pursuant to this Agreement.

Tracks and Vehicles

23. Unless otherwise agreed with the Pastoral Lessee, wherever reasonably practical, the use of motor vehicles by the Native Title Claim Group or Native Title Claim Group Invitees will be limited to existing roads and/or tracks.
24. The Native Title Claim Group will not construct any new tracks on the Land unless agreement has been reached with the Pastoral Lessee, including agreement in relation to the maintenance of such tracks.
25. The Native Title Claim Group must not travel on tracks or roads on the Land in an area where public roads have been declared closed to traffic by State authorities due to wet weather conditions, except:-
- 25.1. in the case of an emergency; or
 - 25.2. if the Native Title Claim Group are on the Land prior to the roads or tracks being closed, and need to return their homes before the road closure has been lifted;

in which case, the Native Title Claim Group will take all appropriate precautions to avoid

damage to such tracks or roads and other effected land.

Hunting, including with firearms

26. Parties will only hunt on the Land in a manner that does not present a risk to other persons or their property.
27. If a member of the Native Title Claim Group or a Native Title Claim Group Invitee intend to use firearms on the Land then they must:-
- 27.1. be appropriately licensed; and
 - 27.2. not use firearms greater than (xx) calibre.
28. If the Pastoral Lessee or employees or contractors of the Pastoral Lessee or other persons known to the Pastoral Lessee (e.g. kangaroo shooters) are planning to use firearms during a period when the Native Title Claim Group are or may be present on the land, then the Pastoral Lessee will make all reasonable attempts to notify the Native Title Claim Group of such possible use.
29. Any use of firearms on the Land by a party must be in accordance with the *Firearms Act (1977)*, and other applicable laws.

Camping

30. Unless otherwise agreed by the Pastoral Lessee, the Native Title Claim Group shall not camp:-
- 30.1. within a radius of 1 kilometre of any house, shed or other outbuilding on the Land; or
 - 30.2. within a radius of 500 metres of a dam or any other constructed stock watering point.

Fires

31. Any lighting of fires on the Land by a party must be in accordance with the *Country Fires Act (1989)*.
32. The Native Title Claim Group must not undertake burning that constitutes clearance of vegetation for the purposes of the *Native Vegetation Act (1991)*, unless agreed by the Pastoral Lessee and permitted under the *Native Vegetation Act*.

Dogs and other animals

33. The Native Title Claim Group will ensure that any dog or other animal brought onto the Land by the Native Title Claim Group or a Native Title Claim Group Invitee is kept under control at all times including being appropriately restrained at night.

Rubbish

34. The Pastoral Lessee and the Native Title Claim Group and Native Title Claim Group Invitees must not leave any litter or rubbish on the Land.

Privacy

35. Subject to clause 36, the Pastoral Lessee, and the State, and their agents and invitees, shall respect the privacy of the Native Title Claim Group and NTGC Invitees while they are undertaking activities pursuant to this Agreement
36. When the Native Title Claim Group have notified the Pastoral Lessee of a ceremony or otherwise appear to be conducting ceremonies on the Land, the Pastoral Lessee and their

invitees and officers or agents of the State (without derogating from statutory powers and duties) shall only engage with the Native Title Claim Group in order to deal with immediate and significant issues such as threats to persons or property, or actual injury to or death of persons or damage to property, unless otherwise invited.

37. The Native Title Claim Group recognize and acknowledge the right of the Pastoral Lessee to carry out pastoral, personal and other activities pursuant to the law and this Agreement and will respect the privacy of the Pastoral Lessee and their invitees.

Public access under Section 48 of the Act

38. If the Pastoral Lessee receives an application from a person to travel across or camp temporarily on the Land under section 48 of the *Pastoral Land Management and Conservation Act* then the Pastoral Lessee will invite the Native Title Claim Group to provide information which might be relevant to determining whether access or camping is permitted and if permitted, any conditions which might imposed.

39. If the State through the responsible Minister receives an application from a person to travel across or camp temporarily on the Land under section 48 of the *Pastoral Land Management and Conservation Act* then the Pastoral Lessee and the Native Title Claim Group will be invited to provide information which might be relevant to determining whether access or camping is permitted and if permitted, any conditions which might imposed.

40. Where as a result of information provided by the Native Title Claim Group in answer to an invitation in accordance with clause 38 or 39, or where the Pastoral Lessee or the State is otherwise aware of a Native Title Claim Group concern about:-

- 40.1. protection of a place of cultural significance; or
- 40.2. the protection of an activity of the Native Title Claim Group; or
- 40.3. any other purpose set out in section 48(2a) of the *Pastoral Land Management and Conservation Act*,

then the Pastoral Lessee or the State shall:

- 40.4. ensure that any approval given is subject to written conditions to avoid any concern raised by the Native Title Claim Group; or
- 40.5. deny approval to the extent necessary to avoid the concern.

Environmental and natural resources

41. The parties shall each use their best endeavors to ensure that pest animals and plants are excluded from the Land or if present, do not spread on the Land.
42. The Pastoral Lessee and the State shall give consideration to any concerns expressed to them by the Native Title Claim Group about the availability of natural resources used in or otherwise related to the conduct of Traditional Activities on the Land.

State assistance to the parties

43. The State will assist the Pastoral Lessee in the following ways:-

- 43.1. fencing as set out in Appendix [X] (*example*)
- 43.2. ...

44. The State will assist in the Native Title Claim Group in the following ways:-

- 44.1. Ensuring the Native Title Claim Group has the capacity to communicate as required for the operation of this Agreement (*example*)
- 44.2. ...

Term, Review and Termination

45. This Agreement shall commence on [.....]("the Commencement Date").
46. This Agreement shall terminate on [.....]("the Termination Date").
47. This Agreement shall terminate on a date earlier than the Termination Date in the following circumstances:-
- 47.1. if the Agreement fails to achieve registration as an Indigenous Land Use Agreement pursuant to Section 24CK or Section 24CL of the *Native Title Act*; or
 - 47.2. by agreement of the parties.
48. This Agreement shall be the subject of a review by the parties;
- 48.1. on the expiry of [X years] from the Commencement Date; and
 - 48.2. on the expiry of [X years] from the previous review.
49. The review will mean the parties meet in good faith to consider the operation of this Agreement since the Commencement Date or the previous review.

Registration

50. The parties to this Agreement agree that the State will apply for registration of this Agreement with the National Native Title Tribunal, and the parties hereby agree to do or cause to be done all things necessary to obtain registration of this Agreement pursuant to Section 24CG of the *Native Title Act*.

Assignment

51. The Native Title Claim Group may only assign the rights, or any of them, conferred to them or arising out of this Agreement with the prior written consent of the Pastoral Lessee and the State who shall deal with any such request in the utmost good faith.
52. Without compromising the Pastoral Lessee's ability to deal with the Pastoral Lease, but in order to maintain and promote good communication the Pastoral Lessee will give Notice to the Native Title Claim Group of any impending change in the people involved in management, or a change in the controlling interests of the Pastoral Lease.
53. The Native Title Claim Group will not disclose or allow to be disclosed any information relating to any change in the management or ownership of the Pastoral Lease which is stated by the Pastoral Lessee to be confidential, or which would reasonably be regarded as confidential.
54. The Native Title Claim Group will give Notice to the Pastoral Lessee of any impending change in the people involved in management or leadership of the Native Title Claim Group.

Notices

55. For the purpose of this Agreement, the addresses, telephone and facsimile numbers of the parties and of the nominated representative of the parties are those set out in Items X to Y of Schedule 1 to this Agreement. Any party may change its contact details from time to time by notice in writing.
56. Any notice, including any consent, approval or communication required or permitted pursuant to this Agreement, must be given:
- 56.1. by telephone to an adult person; or
 - 56.2. by facsimile transmission (with transmission confirmation); or
 - 56.3. by registered post or letter delivered by hand and received by an adult person; or

- 56.4. by ordinary or electronic mail; or
- 56.5. by any other agreed method.

Amendment

57. This Agreement may be amended provided that such amendment is in writing executed by the parties and registered in accordance with Section 24CG of the *Native Title Act*.

Waiver

58. Any waiver by a party in respect of any breach, or failure to comply with any term or condition of this Agreement shall not operate as a waiver of any subsequent breach, or failure to comply with this Agreement.

Governing Law

59. This Agreement is to be governed by the laws in effect in the State of South Australia and each party submits to the exclusive jurisdiction of the Courts of the State of South Australia.

Survival of Covenants and Warranties

60. The obligations under this Agreement are continuing obligations and remain in full force and effect following completion or termination of this Agreement to the extent required to protect the interests of the parties.

Entire Agreement

- 61. This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and arrangements between the parties in connection with such subject matter.
- 62. In entering this Agreement, the parties do not rely on any warranties, representations or inducements other than those set out in this Agreement.

Determination of Native Title

63. This Agreement shall continue notwithstanding any determination by the Federal Court as to the existence or otherwise of native title over the Land or land adjacent to the Land, whether or not that determination was made by consent.

Dispute Resolution

- 64. If a dispute arises between the Native Title Claim Group and the Pastoral Lessee then;
 - 64.1. notwithstanding the existence of a dispute, the Native Title Claim Group and the Pastoral Lessee will continue to perform this Agreement
 - 64.2. the Nominated Native Title Claim Group Representative and the Nominated Pastoral Lessee will, as soon as possible (and in any event within 28 days) after notification of the dispute, confer to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means;
 - 64.3. if the dispute has not been resolved in accordance with clause 64.2, then either Party to the dispute may refer the dispute to the Mediator. If for any reasons the person identified in Schedule 1 as the Mediator is unavailable to act as the Mediator, then a replacement Mediator shall be:
 - 64.3.1. agreed upon in writing between the Nominated Native Title Claim Group Representative and the Nominated Pastoral Lessee; or
 - 64.3.2. failing such agreement, selected by the Presiding Member or Acting Presiding Member for the time being of the National Native Title Tribunal in South Australia.

- 64.4. the Mediator will, within fourteen (14) days of receipt of the notice of the dispute, meet as necessary with the Nominated Pastoral Lessee and the Nominated Native Title Claim Group Representative and other persons if appropriate to attempt to resolve the dispute or to agree on methods of resolving the dispute.
- 64.5. if after the expiry of twenty eight (28) days of receipt of the notice of the dispute by the Mediator, the dispute or any part of the dispute is not resolved by the procedures set out above, then the parties may take such steps as they see fit.
- 64.6. Where the dispute is about:
- 64.6.1. whether a direction by the Pastoral Lessee preventing access to, or preventing Traditional Activities or a ceremonial nature at a particular place, is reasonable; or
- 64.6.2. a significant threat to the rights and interests of a party;

and there is an urgent need to resolve the matter, then the affected party may seek a Court order in relation to the dispute after an initial attempt to resolve the dispute has failed.

65. If any dispute arises between the State and one or both of the other parties, then the above provisions apply except that the State may require that a different Mediator be agreed, or failing agreement, appointed as set out in clause 64.3.2.
66. Subject to any agreement to the contrary, each party shall bear its own costs in relation to any mediation under this Agreement.

Applicable Laws

67. In carrying out this Agreement, the Pastoral Lessee, the Native Title Claim Group and Native Title Claim Group Invitees shall at all times comply with:-
- 67.1. the Acts of the Parliaments of the Commonwealth and the State of South Australia, and any regulations under those Acts, including but not limited to:
- 67.1.1. the *Pastoral Land Management and Conservation Act 1989*;
- 67.1.2. the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986*;
- 67.1.3. the *Soil Conservation and Land Care Act 1989*;
- 67.1.4. the *Native Vegetation Act 1991*;
- 67.1.5. the *Water Resources Act 1997*;
- 67.1.6. the *National Parks and Wildlife Act 1972*;
- 67.1.7. the *Aboriginal Heritage Act 1988*;
- 67.1.8. the *Development Act 1993*;
- 67.1.9. the *Firearms Act 1977*;
- 67.1.10. the *Country Fires Act 1989*;
- 67.1.11. the *Motor Vehicles Act 1959*;
- 67.1.12. the *Environment Protection Act 1993*;
- 67.1.13. the *Natural Resources Management Act 2004*
- 67.1.14. the *Native Title (South Australia) Act 1994*;
- 67.1.15. the *Native Title Act 1993 (Commonwealth)*;
- 67.1.16. the *Racial Discrimination Act 1975 (Commonwealth)*;
- 67.1.17. the *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)*; and
- 67.2. the lawful requirements of any Authority

Meetings and communication

- 68. The parties agree to communicate with each other in a timely way to deal with any issues or disputes that arise under this Agreement.
- 69. The Pastoral Lessee representatives and the Native Title Claim Group Representatives will meet approximately every six (6) months/twelve (12) months (or at such other times or intervals as agreed from time to time) to discuss the operation of this Agreement.

Burials

- 70. Where a burial is proposed by the Native Title Claim Group on the Land then as far as is practicable the burial should be carried out in accordance with any Pastoral Board policy concerning burials on pastoral land unless otherwise agreed between the Native Title Claim Group and the Pastoral Lessee.

Liability

- 71. The parties each agree that the duty of care and standard of care of the other parties is to be limited so that it is no greater than it would have been had access and the undertaking of Traditional Activities by Native Title Claim Group continued to be governed by section 47(1) of the *Pastoral Land Management and Conservation Act* as it existed at 1 September 2004.

Confidentiality

- 72. The parties must not in any way disclose or allow to be disclosed to any other party to the agreement or to any third party any information that has become known as a result of the negotiations and that is reasonably regarded by the disclosing party as confidential to it.
- 73. No part of this Agreement is to be treated as confidential [*or Clauses ... are to be treated as confidential.*]

Signing part

THE NATIVE TITLE CLAIM GROUP

THE PASTORAL LESSEE/S

THE STATE OF SOUTH AUSTRALIA

Schedule 1 (recording names and contact details of nominated contact people for Native Title Claim Group, Pastoral Lessee and State, name of Mediator etc)

Attachment. Map showing land covered by Agreement