

Request for submissions

We note that you have called for public submissions which relate to the terms of reference. We believe it may be helpful to set out our clients' position in general terms in relation to the proposal to grant a lease to Unions NT over the Stella Maris site in August 2012 as a submission in response to this request:

1. The decision to offer a lease of Stella Maris to Unions NT was a decision made by cabinet. You will appreciate that both of our clients are obliged to maintain cabinet confidentiality and cannot say anything about what cabinet considered and what was discussed by its members unless and until that confidentiality is waived by the Northern Territory. Our clients will be writing to the Attorney seeking that waiver.
2. When Mr McCarthy wrote to Unions NT on 3 August 2012, he was fulfilling his duty as a minister to carry out a decision of cabinet. If the decision to make the offer set out in that letter is to be criticised, that criticism should be directed towards cabinet.
3. In discharging their functions as members of cabinet in this respect, neither of our clients acted otherwise than bona fide and, they believed, consistent with Government policy on community land grants. They believed at the time – and still believe – that this decision was in the best interests of the Territory in order to best preserve and promote the heritage values of Stella Maris. They did not believe that they were offering Unions NT an asset which was likely to generate any substantial net financial benefit or which could be sold to realise a substantial net return. They had no knowledge at the time of any agenda on the part of Unions NT to obtain any such benefit.
4. Unions NT was not in fact receiving an asset which was likely to generate any substantial net financial benefit or which could be sold to realise a substantial net return. If a lease of the kind proposed had been entered into between the NT Government and Unions NT, it is unlikely to have produced any substantial net financial return for Unions NT, quite the opposite. Further, the proposed lease did not have any value as a saleable interest in real property and could not have been sold to generate any funds.
5. As subsequent events demonstrate, the acceptance of the letter of 3 August 2012 and the payment of the fee mentioned in that letter by Unions NT did not give rise to an agreement to enter into a lease between the NT Government and Unions NT enforceable by action in the courts. The offer was a non-binding indication of an intention to exercise a statutory power for a public purpose on terms which were insufficiently precise (particularly in relation to the development proposal referred to in paragraph (c) of the letter) to create enforceable contractual rights. Consistent with this legal position, the new NT Government has decided not to proceed with the transaction and Unions NT has not demonstrated any appetite for contesting that decision. The result is that whatever view one may take of cabinet's decision to offer a lease of Stella Maris to Unions NT and Mr McCarthy's letter communicating that offer to Unions NT, it was left to be implemented by the new Government, it was not implemented by the new Government, and, as a result, nothing came of it.