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The Wild Rivers (Environmental Management) Bill 2010

Background

3.1 The Bill was introduced on 15 November 2010 as a Private Member's Bill by the Leader of the Opposition, the Hon Tony Abbott MP.

Purpose and overview of the Bill

3.2 The Bill contains six substantive provisions. They are:

- a proposed section 3 which has expanded definitions of 'Aboriginal land' and 'owner';
- a proposed section 4, which states:
  - ⇒ the Commonwealth relies on its legislative powers under section 51(xxvi) of the Constitution, and any other express or implied legislative Commonwealth power capable of supporting the enactment of the Bill;
  - ⇒ it is the Parliament's intention that the Bill be a special measure for the advancement and protection of Australia's Indigenous people;
  - ⇒ it is the Parliament's intention that the Bill protect the rights of traditional owners of native title land within wild river areas to own, use, develop and control that land; and
  - ⇒ should the enactment of the Bill result in the loss of employment by persons employed or engaged to assist in the management of a wild

river area then the Commonwealth Government should provide employment to those persons in accordance with details specified in the regulations.

- a proposed section 5, which provides that the development or use of native title land in a wild river area cannot be regulated under the Queensland Act unless the Aboriginal traditional owners of the land agree in writing;
- a proposed section 6, which provides that agreement of native title holders under the proposed section 5 may be obtained by the registration under Sections 24BI, 24CK and/or 24CL of the *Native Title Act 1993* which includes a statement to the effect that the parties agree to an area of land being regulated.
- a proposed section 7, which provides that a wild river declaration made before the commencement of the Bill (should it become an Act) will be valid until a fresh declaration is made with the agreement of the Aboriginal traditional owners of the land or six months elapse from the commencement of the Bill, whichever is the first; and
- a proposed section 8, which grants the Governor-General a discretionary power to make regulations for the purposes of the Bill, including:
  - ⇒ for seeking the agreement of Aboriginal traditional owners under the Bill;
  - ⇒ for negotiating the terms of the agreement;
  - ⇒ for giving and evidencing the agreement; and
  - ⇒ for the continued employment of all existing Aboriginal people and other people in its implementation.

Analysis of the Bill and its provisions

Overview

3.3 The Bill has a number of problems. Many of the criticisms received during the inquiry are that the Bill is poorly worded, confusing and unworkable. Chuulangun Aboriginal Corporation provided a succinct summary:

> The Bill makes allowance for declaration of a wild river only with the consent or 'agreement' of 'owners'. Further, the Bill states: 'The development or use of Aboriginal land in a wild river area

> cannot be regulated under the relevant Queensland legislation unless the owner agrees in writing.' There is no clarity in the Bill about what is meant by the concepts 'consent', 'agreement' and 'owner'? Consent and agreement are not properly defined, and the Bill provides eight different definitions of 'owner'.[1]

3.4 The Bill is unclear in its intention. Further, it lacks detail as to how to achieve its underlying intentions. The Queensland Conservation Council noted:

> ... the terminology of the Bill is extremely vague and nebulous and does not really describe well what it is intended to do. ... while we acknowledge that there are reasons behind this Bill being presented, we do not necessarily think that it has been overly well crafted or targeted at the right area to achieve the outcomes that we think it is supposed to be addressing.[2]

3.5 The Bill's structure and content also result in an 'over-reach' which would likely result in some form of legal or constitutional challenge. By stipulating that Indigenous owners must provide 'consent in writing', the Bill provides those owners with a veto power that no other Australians have.[3]

3.6 While the DRIP sets important principles for the fundamental human rights of Indigenous people, it is not legally binding and does not have a technical effect on Australian law.

3.7 These points will be expanded upon further in the specific analysis of the Bill's clauses below.

Clause 3

Background

3.8 Clause 3 provides definitions for the Bill's relevant terms. While some of these definitions are uncontroversial, others have been questioned – particularly the eight definitions of what constitutes 'Aboriginal land' and that of an 'owner'.

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1 Chuulangun Aboriginal Corporation, *Submission 22*, p. 15.

2 Mr Nigel Parratt, Rivers Project Officer, Queensland Conservation Council, Committee *Hansard*, 9 March 2011, p. 70.

3 Mr John Bradley, Director-General, Queensland Department of Environment and Resource Management, *Committee Hansard*, 9 March 2011, p. 51.

3.9 The Bill states that it is 'to protect the interests of Aboriginal traditional owners in the management, development and use of native title land situated in wild river areas.' However, the legislation provides six other categories of Aboriginal land.[4] For the purposes of the Bill, 'Aboriginal land' means:

(a) Aboriginal land under the *Aboriginal Land Act 1991 (Qld);*
(b) land where native title exists;
(c) a lease under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985 (Qld);*
(d) deed of grant in trust land under the *Land Act 1994 (Qld)* granted for the benefit of Aboriginal people;
(e) a reserve under the *Land Act 1994 (Qld)* for a community purpose that is, or includes, Aboriginal purposes;
(f) freehold, or a term or perpetual lease under the *Land Act 1994 (Qld*), held by, or in trust for, an Aboriginal person or an Aboriginal corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
(g) the Aurukun Shire lease under the *Local Government (Aboriginal Lands) Act 1978 (Qld).*

3.10 Similarly, the definitions of 'owner' are quite broad. For the purposes of the Bill, 'owners' means:

(a) for Aboriginal land under the *Aboriginal Land Act 1991* (Qld)—the grantees of Aboriginal land under that Act;
(b) for land where native title exists—native title holders under clause 224 of the *Native Title Act 1993*;
(c) a lease under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (Qld)—the lessee;
(d) deed of grant in trust land under the *Land Act 1994* (Qld) granted for the benefit of Aboriginal people—the grantee;
(e) a reserve under the *Land Act 1994* (Qld) for a community purpose that is, or includes, Aboriginal purposes—the trustee of the reserve;
(f) for freehold held by, or in trust for, an Aboriginal person or an Aboriginal corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)—the registered proprietor under the *Land Title Act 1994* (Qld);
(g) for a term lease or perpetual lease under the *Land Act 1994* (Qld) held by, or in trust for, an Aboriginal person or an Aboriginal corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)—the lessee;
(h) the Aurukun Shire lease under the *Local Government (Aboriginal Lands) Act 1978* (Qld)—the Aurukun Shire Council.[5]

4 Australians for Native Title and Reconciliation (ANTaR), *Submission 23*, p. 5.

5 Wild Rivers (Environmental Management) Bill 2010, http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4467_first/toc_pdf/10258b

Analysis

3.11 The definitions of both 'Aboriginal land' and 'owner' are so broad as to cause confusion and possibly bring the Bill into conflict with other legislation, such as the Commonwealth *Native Title Act 1993*. With specific focus on 'Aboriginal land', The Queensland Government observed:

> The 'Definitions' (clause 3) state that Aboriginal land is to include land where native title exists—under the principles of the *Native Title Act* this may include land where native title has not necessarily been resolved.
>
> If the Bill is intended to extend the rights afforded to native title holders, a more appropriate mechanism would be amendment to the Commonwealth's *Native Title Act 1993* (NTA). This Act already provides the framework and processes to recognise and protect native title rights and interests—and is within the jurisdiction of the Commonwealth Government to address. [6]

3.12 The question of native title status of over a particular piece of land was also raised. As native title is a pre-existing right, native title could exist over land which is not yet subject to a native title claim or determination. Adding to this ambiguity is the question over who the relevant owner or owners of the land are if negotiations need to occur over a potential wild river declaration. The Inter-Departmental Committee of the Commonwealth Government (IDC) commented:

> Also, through its definition of 'native title land,' the Bill applies to land over which native title exists. Because native title is a pre-existing right, native title could exist over land which is not yet subject to a native title claim or determination. There is no compulsion for a claim to be lodged, so the proposed definition could have the effect of requiring the agreement of the owner of land over which no claim need ever be lodged, and over which native title may not exist. Due to this, it is possible that the Bill could enable Indigenous land owners who have not lodged native title claims, or do not have a native title determination, to prevent regulation of land in a Wild River area. This may create practical problems as it may be difficult to ascertain who the relevant owners of the land are in order to obtain their written agreement to the development or use of the land as required by the Bill.[7]

01.pdf;fileType=application%2Fpdf, accessed 31 March 2011.

6 Queensland Government, *Submission 29*, p. 21.

7 Commonwealth Inter-Departmental Committee (IDC), *Submission 31*, pp. 20–21.

3.13 The definition of owner in particular has been identified as problematic. [8] The definition's expansive nature has the potential to result in 'overlap' between different individuals or groups who may all claim to be the 'owner' under one or more of the definitions. This results in confusion as to who does or does not have the right to provide the required 'consent'. The Carpentaria Land Council Aboriginal Corporation (CLCAC) provided a tangible example:

> ...if the Bill is passed in its current form and there was a proposal to declare a wild river in the southern Gulf of Carpentaria (and the proposed transitional provisions also applied), CLCAC would be concerned that consent may possibly be required from all of the following (in addition to native title holders/traditional owners) before a declaration could be made:
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> - The local Aboriginal Shire Council; and
> - grantees of Aboriginal land under the *Aboriginal Land Act 1991*; and
> - any individual Aboriginal person who has been given a lease by a Shire Council on [Deed of Grant in Trust] DOGIT land; and
> - the trustee of any community purpose reserve; and
> - any body or person holding freehold on trust for an Aboriginal person or corporation; etc....[9]

3.14 CLCAC also noted that the Bill, through its diverse definitions of 'Aboriginal land' and 'owner', may provide Aboriginal persons other than traditional owners with a right to veto proposed wild rivers declarations.[10]

3.15 Professor Jon Altman also addressed this question. He considered it a legitimate concern that the Bill's definitions resulted in an ambiguous and contentious list of those required to give consent in writing. Professor Altman observed:

> Many questions arise here: Who has to give consent? All members of a land owner group by consensus? An elected or self proclaimed leader of the 'traditional owners'? The applicants (if it is a native title claim group) or the prescribed Body Corporate (if it is a determined group)? What if there are overlapping claim groups?[11]

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8 Dr Tim Seelig, Queensland Campaign Manager, The Wilderness Society, Committee *Hansard*, 9 March 2011, p. 12.

9 Carpentaria Land Council Aboriginal Corporation (CLCAC), *Submission 24*, pp. 3–4.

10 Carpentaria Land Council Aboriginal Corporation (CLCAC), *Submission 24*, pp. 3–4.

11 Professor Jon Altman, *Submission 15,* pp. 8–9.

3.16 There is also the issue of consensus. Should it be found, for example, that five 'owners' are required to consent to a wild river declaration, it is unclear if the declaration would proceed if only four of the five agreed. The result may well be that the one dissent may prevent the declaration proceeding despite the fact that the majority have approved. At the least it is likely to result in a long and protracted consultation process.

3.17 The combination of these two broad sets of definitions has the potential to render the existing *Wild Rivers Act 2005* (Qld) unworkable and open to litigation.[12] The Queensland Government stated:

> The 'owner', as defined, encompasses a wide range of people. Because of the historical displacement of Indigenous peoples, there will likely be disputes over who the owners are for different areas. Some Indigenous people elect others to make decisions on their behalf because they do not want to sign documents. Others are unable to do so for various reasons: some owners have moved from their traditional country and live in other parts of Australia. It may be difficult to identify all the owners, leaving any declaration open to legal challenge.[13]

3.18 This question of legal challenge is of great importance as such action could lead to conflict between different communities. CLCAC expressly stated their concern that if the Bill is passed it will result in conflict between Aboriginal individuals and groups and between traditional and non-traditional owners.[14]

3.19 The Bill's broad definitions have resulted in an unworkable Bill. The many and varied definitions of 'Aboriginal land' and 'owner' have resulted in confusion and their practical application will likely result in long, protracted and confusing consultation processes. Further, these definitions may result in different Indigenous communities being in conflict, potentially resulting in legal action.

3.20 While the Bill's broad definitions make it unworkable, it is also important to note that the issue of potential 'overlap' between different 'owners' was equally of concern in the previous version of the Bill introduced into the 42nd Parliament. The complex and contested issue of indentifying the appropriate owner to provide consent is a fundamental issue with the Bill's intent, as well as the poor drafting of the current version of the Bill.

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12 Queensland Government, *Submission 29*, p. 21.

13 Queensland Government, *Submission, 29*, p. 25.

14 Carpentaria Land Council Aboriginal Corporation (CLCAC), *Submission 24*, pp. 3–4.

Clause 4

Background

3.21 Clause 4 provides the Bill's constitutional basis, sets out its intent and proposes a compensatory claim for any loss of employment currently undertaken through the provisions of the Queensland Act. It proposes that:

- the Commonwealth relies on its legislative powers under section 51(xxvi) of the Constitution, and any other express or implied legislative Commonwealth power capable of supporting the enactment of the Bill;
- it is the Parliament's intention that the Bill be a special measure for the advancement and protection of Australia's Indigenous people;
- it is the Parliament's intention that the Bill protect the rights of traditional owners of native title land within wild river areas to own, use, develop and control that land; and
- should the enactment of the Bill result in the loss of employment by persons employed or engaged to assist in the management of a wild river area then the Commonwealth Government should provide employment to those persons in accordance with details specified in the regulations.

Analysis

3.22 Constitutionally, the Bill raises some serious questions about the continued validity of the *Wild Rivers Act 2005* (Qld). Supporters of the Bill, such as Balkanu and Cape York Land Council, commented that the Bill did not overturn the Queensland Act.[15] Considered legal opinion, however, concludes that the Bill would override the Act.

> Professor George Williams citing legal precedent, concluded that the Bill would override the Queensland Act under section 109 – the laws of the Commonwealth prevail over the laws of a State to the extent of any inconsistency – obliging them not to regulate wild river areas that are also subject to native title without first obtaining agreement from the Aboriginal traditional owners.[16]

15 Balkanu and Cape York Land Council, *Submission 6.1*, p. 2.

16 Professor George Williams, *Submission 1*, p. 2.

3.23 Enactment of the Bill would therefore override the legislation of the Queensland Parliament setting a particular precedent. The Queensland Government observed that the Bill would undermine and remove the democratically elected Queensland Parliament's power to regulate the environment in wild river areas without consent of Indigenous owners: an outcome which it considered to be an intrusion into the lawful legislative powers of the State. [17]

3.24 Clause 4's second point – that 'this Act be a special measure for the advancement and protection of Australia's Indigenous people' – is broad and ambiguous. The Queensland Government questioned as to how Indigenous peoples' interests will be protected and advanced 'nor specify exactly what Indigenous people are to be protected from, or in what areas advances will be made'.[18]

3.25 Clause 4's final point – that of compensatory employment for any loss of jobs due to the Bill's passing – also attracted comment. The Queensland Government argued that the Bill's passing could lead to the collapse of employment for people managing wild river areas – particularly the Wild Rivers Rangers program. [19] Evidence was received that the program was a success and should be continued.[20] Further, the Bill's alternative employment provisions are not adequately explained. The Queensland Government stated:

> The Bill addresses this to some extent by stating the Commonwealth Government should provide employment to those people in accordance with details specified in the regulations—but with no regulations available for examination it is unclear whether the employment proposed by the Commonwealth would amount to fair compensation for the termination of rangers' current employment. In particular:
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> - in the absence of the regulation, it is not clear over what period the Wild River Rangers will be guaranteed employment
> - it is not clear whether the terms and conditions of employment will align with those currently provided to Wild River Rangers, and if the community-based approach will continue
> - no guidance is given in the Bill about the duties to be performed under Commonwealth employment

17 Queensland Government, *Submission 29*, p. 22.

18 Queensland Government, *Submission 29*, p. 24.

19 Queensland Government, *Submission, 29*, p. 26.

20 Professor Jon Altman, *Submission 15*, p. 7; Australia Zoo, *Submission 10*, p. 6.

- the Wild River Ranger program has an accompanying training, mentoring and support structure funded by the Queensland Government. It is not clear whether the Bill also guarantees this supporting framework.[21]

3.26 The Queensland Government was similarly concerned about the potential revocation of the existing wild river declarations as it could end the employment of the current group of thirty-five Wild Rivers Rangers but also the potential employment of a further sixty-five rangers. The loss of this employment would reduce the economic opportunities for the Indigenous people the Bill purports to protect.[22]

3.27 The wording of the Bill's clause 4 will likely result in the overriding of the *Wild Rivers Act 2005* (Qld) and the discontinuance of an effective state program. The resulting precedent would make the states' task of enacting legislation for the purpose of protecting the environment more difficult, and potentially may result in opening up areas of Cape York and other environmentally sensitive places in Queensland to damaging exploitation.

Clause 5

Background

3.28 Clause 5 provides that the development or use of native title land in a wild river area cannot be regulated under the Queensland Act unless the Aboriginal traditional owners of the land agree in writing.

Analysis

> Clause 5 is the most controversial aspect of this Bill as it provides for a right of consent not available to any other group in the country.

3.29 Clause 5 provides that the development or use of Aboriginal land in a Wild River area cannot be regulated under the relevant Queensland legislation unless the owner agrees in writing. The requirement for consent is already a difficult one due to the broad definition of 'owner' as discussed earlier in this chapter.[23] The Bill provides for several categories of owner and arguably creates precedents for other jurisdictions and in law. The Queensland Government explained:

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21 Queensland Government, *Submission, 29*, p. 26.

22 Queensland Government, *Submission, 29*, p. 26.

23 John Altman, *Submission 15*, p. 9.

> ... the Wild Rivers (Environmental Management) Bill 2010 ... appears to provide a power of veto for all owners of Aboriginal land over any wild river declaration. This provides a power beyond any held by any person for any other act of parliament, including for the regulation of mining, land-use planning, health or environmental legislation. Such a power is not one enjoyed by any other citizen in any part of Australia, and its introduction raises serious implications for both the responsible protection of the environment and for a state's rights to make laws to protect the environment—or other laws, for that matter. If passed it would set a dangerous precedent for Commonwealth intrusion into lawful state environmental protection, remembering that this policy has been explicit in the mandate of elected state governments over three election cycles.[24]

3.30 The Wild Rivers Inter-departmental Committee too expressed its reservations over this aspect of the Bill. Written consent, they argued, is an extension of the rights of native title holders beyond what is provided for in the *Native Title Act 1993* and is not applied consistently nation-wide.

> The Wild Rivers (Environmental Management) Bill 2010 requires the written agreement of the owners of the land to the regulation of the development or use of Aboriginal land in wild rivers areas under the [*Wild Rivers Act 2005* (Qld)]. For land involving native title, this is an extension of the rights of native title holders beyond what is provided for in the *Commonwealth Native Title Act 1993*. As noted, the [*Wild Rivers Act 2005* (Qld)] does not affect the rights of native title holders. In contrast, the Commonwealth bill before the parliament extends the rights of the native title holders. It is also important for the committee to note that this extension applies only to native title holders in areas subject to the *Wild Rivers Act 2005* (Qld).[25]

3.31 This effective granting of a veto-power purely for a particular group of people from Queensland sets an unusual and undesirable precedent. The committee agrees with Professor Jon Altman of the Australian National University who stated that providing some form of 'geographic

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24 Mr John Bradley, Director-General, Queensland Department of Environment and Resource Management, Committee *Hansard,* 9 March 2011, p. 48.

25 Mr Andrew Tongue, Deputy Secretary, Department of Families, Housing, Community Services and Indigenous Affairs, Committee *Hansard*, 26 November 2011, pp. 5– 6.

exceptionalism' – whether it be in Cape York, Queensland or elsewhere – will not result in satisfactory and consistent national policy making.[26]

Clauses 6 and 7

Background

3.32 These Clauses are examined together as they deal with gaining the consent of the 'owner', and the mechanisms by which permission is sought from those owners, particularly with regards to Indigenous Land Use Agreements (ILUA).

3.33 Clause 6 provides that agreement of 'owner of land where native title exists' may be obtained by the registration under Clauses 24BI, 24CK and/or 24CL of the *Native Title Act 1993* which includes a statement to the effect that the parties agree to an area of land being regulated.

3.34 Clause 7 provides that a wild river declaration made before the commencement of the Bill will be valid until a fresh declaration is made with the agreement of the Aboriginal traditional owners of the land or six months elapse from the commencement of the Bill, whichever occurs first.

Analysis

3.35 The six month time-frame for agreement stipulated in the Bill was considered unworkable, particularly with regard to where ILUAs are involved.[27] The Chuulangun Aboriginal Corporation observed that this six month time-frame for agreement clashed with the requirements of the *Native Title Act 1993*:

> The timeframe of six months provided for in the Bill for a new declaration to be made with the agreement of the owner of the Aboriginal land is unworkable. If an agreement is not made in six months, the declaration will lapse. The Bill notes that agreement be made by way of the ILUA process under the [*Native Title Act 1993*] and the National Native Title Tribunal states a six month 'cooling off' period after an ILUA application is submitted, so the Wild River declaration proposal would lapse before the agreement making process ever began.[28]

26 John Altman, *Submission 15*, p. 2.

27 Queensland Government, *Submission 29*, p. 25.

28 Chuulangun AC, *Submission 22*, p. 15.

3.36 The Queensland Government raised essentially the same concern – that the process by which ILUAs are negotiated and concluded would make further Wild River declarations impossible if the Bill were passed. In their words:

> It appears, by default, the Bill must cause the collapse of a wild river declaration in those cases where an ILUA is required. As noted above, the Bill provides only a period of six months to reach agreement with the owners of Aboriginal land before the existing wild river declaration collapses (clause 7). Also noted above, the Bill states that where native title exists, the agreement of an owner may be obtained by a registered body corporate or an Indigenous Land Use Agreement (ILUA) (clause 6).[29]

3.37 Further, not only does the Native Title Tribunal require a six month 'cooling-off' period for the registration of an ILUA, but there is also the broader consultation and negotiation process which, in the Queensland Government's experience, takes between 12 – 18 months .

> The National Native Title Tribunal states parties must allow a minimum of six months simply for the registration of an ILUA:
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> - 'A further six months should be allowed as a minimum once an application to register the ILUA is made to the Tribunal. The Registrar must notify certain people and organisations of the application to register the ILUA and in the case of area and alternative procedure agreements, must also notify the public. Time must also be allowed for any objections to the registration of the ILUA to be considered.'
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> It is the experience in Queensland that ILUAs take between 12 and 18 months to negotiate... This means that, even with regulations in place at the outset, it is virtually impossible, according to the best available advice, to develop an ILUA, negotiate and draft its terms of reference, register it, gain consent of native title holders for the ILUA to act on their behalf, and negotiate and reach agreement over wild river declarations, all in the six months allowed under the Bill.
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> Consequently it must be assumed the effect of the Bill is that declarations will expire, even in areas where there is widespread support.[30]

29 Queensland, Government, *Submission 29*, p. 27.

30 Queensland, Government, *Submission 29*, p. 27.

3.38 Clauses 6 and 7 add a further layer of unworkable stipulations to a Bill which, through its definitions of 'Aboriginal land' and 'owner', is already very difficult to implement. The six-month period for the conclusion of a consultation process before making a wild rivers declaration is particularly onerous and unrealistic given the evidence presented to the committee. Further, there is also the issue of trying to use ILUAs where non-native title holders are involved. Incorporating those non-native title owners into the ILUA decision-making process and gaining their written agreement adds a further layer of difficulty.

Conclusions

3.39 Analysis of the Bill's provisions casts serious doubt on its effectiveness and workability.

3.40 The Bill's broad definitions in clause 3 have produced what is likely to be an unworkable Bill. The many and varied definitions of 'Aboriginal land' and 'owner' creates a series of permutations for negotiating consent which must be navigated for wild rivers declarations to proceed. These definitions will likely result in long and protracted consultation processes. There is also the possibility that these definitions may result in different Indigenous communities being in legal conflict.

3.41 Legal analysis provided to the inquiry shows that the Bill's clause 4 will likely override the *Wild Rivers Act 2005* (Qld). This has a number of undesirable outcomes. Firstly, the resulting precedent would make the states' task of enacting legislation for the purpose of protecting the environment more difficult. Secondly, the overturning of this legislation may potentially result in opening up areas of Cape York and other environmentally sensitive places in Queensland to damaging exploitation. Finally, the successful Wild River Rangers program may be put in jeopardy by the Bill despite its stated intention of providing compensatory employment.

3.42 Clause 5 stipulation that consent must be granted in writing has a particularly unique impact. This effective granting of a veto-power purely for a singular group of people from Queensland sets an unusual and undesirable precedent. To grant one group of people a particular set of rights above everyone else, however well intended, is detrimental to good policy.

3.43 Clauses 6 and 7 add a further layer of unworkable stipulations to a Bill which, through its definitions of 'Aboriginal land' and 'owner', is already very difficult to implement. The six-month period for the conclusion of a consultation process before a wild rivers declaration is particularly onerous and unrealistic. Experts in this field state that such a process, if conducted properly, is likely to take at least twelve months.

3.44 The Bill as a whole is ambiguous in its intent, poorly drafted, inconsistent with other legislation, and produces a number of undesirable outcomes none of which guarantee that the Indigenous people of Queensland will achieve better economic, social, environmental or cultural outcomes. Ultimately, an Act of the Commonwealth Parliament to overturn state legislation will not fundamentally address the barriers to economic development in Cape York or the concerns of stakeholders.

3.45 The Bill is flawed and should not be passed into law.

Recommendation 11

That the House of Representatives not pass the Wild Rivers (Environmental Management) Bill 2010.

Mr Craig Thomson MP
Chair
4 May 2011