

Carpentaria Land Council Aboriginal Corporation

**SUBMISSION TO THE HOUSE OF REPRESENTATIVES
INQUIRY INTO INDIGENOUS ECONOMIC
DEVELOPMENT IN QUEENSLAND AND REVIEW OF
THE *WILD RIVERS (ENVIRONMENTAL
MANAGEMENT) BILL 2010***

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INTRODUCTION

1. Carpentaria Land Council Aboriginal Corporation ("CLCAC") is the organisation carrying out the functions of a representative Aboriginal/Torres Strait Islander body pursuant to s203FE of the *Native Title Act 1993* (Cth) ("the NTA") in relation to land and waters in the southern Gulf of Carpentaria.
2. CLCAC's representative body area includes land and waters the subject of Federal Court determinations recognising the existence of native title.¹ It also includes land and waters which are the subject of native title claims² and areas where native title is asserted notwithstanding that formal proceedings are yet to be commenced. CLCAC's area includes determinations or claims adjacent to or in the vicinity of town areas and Aboriginal communities including Doomadgee, Burketown, Normanton and Gununa (Mornington Island).
3. CLCAC assists native title claim groups and prescribed bodies corporate with registered native title claims and determinations covering the *Gregory Wild River Declaration 2007* and *Settlement Wild River Declaration 2007* and assists traditional owners who assert rights and interests over the *Morning Inlet Wild River Declaration 2007* and the *Staaten River Wild River Declaration 2007*.
4. CLCAC is pleased to provide the following submission to the House of Representatives inquiry into Indigenous Economic Development in Queensland and review of the *Wild Rivers (Environmental Management) Bill 2010*.

WILD RIVERS DECLARATIONS & INDIGNEOUS RANGERS IN THE SOUTHERN GULF OF CARPENTARIA

5. CLCAC refers to and replies upon its "Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the *Wild Rivers (Environmental Management) Bill 2010*" dated 31 March 2010 annexed hereto and marked "Attachment A".
6. Attachment A includes details of those Wild Rivers declarations that were made in the southern Gulf of Carpentaria in 2007 and outlines the support received from Traditional Owners in respect to each of those declarations. The Committee is specifically referred to paragraphs 5-12 of Attachment A.
7. CLCAC, traditional owners and native title holders in the southern Gulf of Carpentaria continue to support the *Gregory Wild River Declaration*, *Morning Inlet Wild River Declaration*, *Settlement Wild River Declaration* and *Staaten River Wild River Declaration*.
8. Attachment A also details the importance and success of CLCAC's Wild River Ranger Program. The Committee is specifically referred to paragraphs 13-21 of Attachment A.

TERMS OF REFERENCE OF THIS INQUIRY

¹ See *Lardil Peoples v State of Queensland* [2004] FCA 298 ('the Wellesley Sea Claim'); *Lardil, Yangkaal, Gangalidda & Kaiadilt Peoples v State of Queensland* [2008] FCA 1855; *Gangalidda & Garawa People v State of Queensland* [2010] FCA 646.

² *Ada Walden & Ors on their own behalf and on behalf of the Waanyi People* QUD 6022 of 1999; *Murray Walden Jnr & Ors on behalf of the Gangalidda & Garawa People* QUD 84 of 2004 and *Walden Jnr & Ors on behalf of the Gangalidda & Garawa People* QUD 66 of 2005.

Indigenous economic development

9. CLCAC is not aware of a single proposed development in its representative area that has been impeded in any way by the operation of the *Wild Rivers Act*.
10. The Committee is referred to the general comments made at paragraphs 29 and 30 of Attachment A.
11. CLCAC is of the view that the ideal of balancing land development and environmental sustainability is a complicated issue that requires consideration well beyond the context of this Bill. CLCAC also considers that proponents of the Bill have presented a simplistic scenario of environment at the expense of development that fails to take into account a range of issues that must be considered if we are to raise barriers to economic development in Indigenous communities.
12. The Committee is urged to make recommendations to ensure that adequate funding is provided to traditional owner organisations to investigate barriers to economic development and to develop sustainable economic development. CLCAC suggests that the role and capacity of native title prescribed bodies to participate in economic development also be investigated and funded.

The *Wild Rivers (Environmental Management) Bill 2010*

13. The intent of the Bill is at the same time both confusing and slippery and, with respect, has been poorly drafted.
14. The most concerning aspect of the Bill is the operation of section 5, together with the definitions of 'Aboriginal land' and 'owner' set out in section 3.
15. CLCAC is concerned that, if the Bill is passed, the operation of Section 5 may result in litigation between traditional owners/native title holders/native title claimants and other Aboriginal people.
16. By relying on the definitions of 'Aboriginal land' and 'owner', section 5 may provide Aboriginal persons other than traditional owners with a right to veto a proposed Wild Rivers declaration. Section 5, it is submitted, could operate to provide all of the Aboriginal persons and/or corporations listed from (a) to (h) under the definition of "owners" with that right, requiring their agreement in writing to a declaration.
17. Thus, for 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:
 - 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 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.

18. Such an approach is obviously flawed if the aim of the Bill (as has been repeatedly stated by Mr Abbott) is to recognise rights of 'traditional owners' to be consulted about Wild River declarations. On the contrary, the Bill will operate to undermine the rights of traditional owners.
19. Such an approach is also clearly opposite to Aboriginal law and custom operating in the southern Gulf of Carpentaria which provides that only traditional owners may speak for country.
20. If the intent of the Bill was to recognise the right of 'traditional owners' to be consulted about Wild River declarations, then it has failed. In circumstances where there is a registered native title claim or positive native title determination, then it is those Aboriginal persons who have made the claim or have the benefit of the determination, and only those persons, who should have the right to veto a proposed Wild River declaration.
21. CLCAC is also concerned because it is not entirely clear how the operation of the *Native Title Act* in its current form might deleteriously affect the rights and interests of native title holders if other Aboriginal persons were given the right to veto a Wild River declaration through the operation of this Bill.
22. Complex legal questions are also raised when we consider the operation of s109 of the Constitution.
23. It is CLCAC's submission that the only sure result if the Bill is passed will be that it will result in conflict between Aboriginal persons and groups, between traditional owners and others.
24. CLCAC is also concerned that the Bill refers only to 'native title holders' and 'land where native title exists' and does not recognise registered native title claimants.
25. CLCAC notes that the procedures set out for obtaining the agreement of native title holders in section 6 is facultative rather than mandatory, with section 5 requiring only that the 'agreement' be 'in writing'. The concern is that significant challenges will be experienced in getting this conveyance correct.
26. Finally, noting as referred to above, the success of CLCAC's ranger program, it is impossible to see how section 8 or section 4(3)(b) can be enforced. Section 8 was added as an afterthought and clearly as a form of inducement, however, it represents a duty of imperfect obligation and is simply not enforceable by mandamus. Section 8(2)(d) also raises numerous practical difficulties, raising more questions than answers, for example: What work is being promised? Where? What will be the pay and conditions?

CONCLUSION

27. CLCAC submits that the Bill will only increase uncertainty and result in conflict between Aboriginal groups.
28. With respect, if Mr Abbott wants to facilitate economic development for the benefit of Indigenous people and at the same time protect the environmental values of undisturbed river systems, then he should instead seek bipartisan agreement to provide for:

- a. adequate land acquisition and economic development funding for traditional owners; and
 - b. adequate funding for traditional owners to maintain, protect and manage their lands and waters.
- 29. Rather than pursue Mr Abbott's Bill, amendments should be made to the *Native Title Act* to provide native title claimants and native title holders with the right to prior informed consent. Such an approach has the added advantage of affording a national (rather than in one part of one State) regime and makes use of an existing defined process for seeking the consent or agreement of traditional owners to development proposals.
- 30. Whilst CLCAC welcomes the Liberal Party's recent attempts to expand the rights of traditional owners (and indeed Mr Abbott's consultations with us about his proposals), we believe that the approach has been unfortunately misguided.
- 31. The Committee should note the recommendation made to the Senate by the Legal and Constitutional Affairs Legislative Committee in its report into the *Wild Rivers (Environmental Management) Bill* (June 2010) that the Senate should not pass the Bill.
- 32. CLCAC urges the Committee to take into account the concerns raised above and submits that the Bill should be abandoned.

CARPENTARIA LAND COUNCIL ABORIGINAL CORPORATION

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SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE INQUIRY INTO THE *WILD RIVERS (ENVIRONMENTAL MANAGEMENT) BILL 2010*



31 March 2010

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INTRODUCTION

***"We were here before the whitefellas came and we'll be here cleaning up their mess long after they've left."*¹**

1. The Carpentaria Land Council Aboriginal Corporation ("the CLCAC") is the organisation carrying out the functions of a representative Aboriginal/Torres Strait Islander body pursuant to s203FE of the *Native Title Act 1993* (Cth) in relation to land and waters in the southern Gulf of Carpentaria.
2. The CLCAC representative body area includes land and waters the subject of Federal Court determinations recognising the existence of native title.² It also includes land and waters which are the subject of native title claims³ and areas where native title is asserted notwithstanding that formal proceedings are yet to be commenced. The CLCAC's area includes determinations or claims adjacent to or in the vicinity of town areas and Aboriginal communities including Doomadgee, Burketown, Normanton and Gununa (Mornington Island).
3. The CLCAC assists native title claim groups with registered native title claims covering the *Gregory Wild River Declaration 2007* and *Settlement Wild River Declaration 2007* and assists Traditional Owners who assert native title rights and interests over the *Morning Inlet Wild River Declaration 2007* and the *Staaten River Wild River Declaration 2007*.
4. The CLCAC is pleased to provide the following submission in response to the Senate Legal and Constitutional Affairs Committee Inquiry into the *Wild Rivers (Environmental Management) Bill 2010* ("the Bill").

WILD RIVERS DECLARATIONS IN THE LOWER GULF OF CARPENTARIA

5. The following Wild Rivers declarations have been made in the southern Gulf of Carpentaria and fall partly or wholly within the area of land and waters for which the CLCAC provides the functions of a native title representative body:
 - *Gregory Wild River Declaration 2007*
 - *Morning Inlet Wild River Declaration 2007*
 - *Settlement Wild River Declaration 2007*
 - *Staaten River Wild River Declaration 2007*
6. These declarations were made following the issuing of notices in late 2005 by the then Queensland Department of Natural Resources, Mines and Water that it intended to declare these rivers as wild under the *Wild Rivers Act 2005* (Qld).
7. In April 2006 the CLCAC made submissions on behalf of the Traditional Owners in respect to each of the proposed declarations. These submissions

¹ Statement made by Gangalidda representative Mr Clarence Walden at a meeting between Gangalidda and Garawa Peoples and the then Queensland Department of Natural Resources, Mines and Water in respect to the proposed Gregory Wild River Declaration, 11 April 2006.

² See *Lardil Peoples v State of Queensland* [2004] FCA 298 ('the Wellesley Sea Claim') and *Lardil, Yangkaal, Gangalidda & Kaiadilt Peoples v State of Queensland* [2008] FCA 1855.

³ Ada Walden & Ors on their own behalf and on behalf of the Waanyi People QUD 6022 of 1999; Murray Walden Jnr & Ors on behalf of the Gangalidda & Garawa People QUD 84 of 2004 and Walden Jnr & Ors on behalf of the Gangalidda & Garawa People QUD 66 of 2005.

were made following consultation with the Traditional Owners and, where relevant, native title claimants.

8. In respect to the proposed Settlement and Gregory Wild River Declarations it was submitted, in summary:

"The Gangalidda and Garawa Peoples, as Traditional Owners, and as the largest property holder in the area covered by the proposed Settlement Creek declaration area, advise of their overwhelming support of the declaration of both Settlement Creek and Gregory Rivers as Wild Rivers."

"The Waanyi People, as Traditional Owners, and as property holders in the area covered by the proposed Gregory River declaration area, advise of their overwhelming support of the declaration of the Gregory River as a Wild River."

9. In respect to the proposed Staaten Wild River Declaration it was submitted, in summary:

"The Kurtijar People support of the declaration of the Staaten River as a Wild River."

10. In respect to the proposed Morning Inlet Wild River Declaration it was submitted, in summary:

"The Kukatj People support of the declaration of the Morning Inlet as a Wild River."

11. In the submission from the Gangalidda and Garawa Peoples and from the Waanyi Peoples the following reservations and concerns were outlined:

- "The Minister should ensure that the Declaration proceeds, but with an opportunity for review in three years to examine the effect of the legislation, and to provide an opportunity for DNRMW to consult further with the Gangalidda and Garawa Peoples and to make any necessary amendments to the Declaration. In the interim, further more accurate information about the Settlement Creek and Gregory River systems should be gathered and made available.
- The Declarations should be significantly strengthened to provide protection from current damage caused by stock access to riverbanks. Settlement Creek and selected major tributaries and Beames Brook should be fenced and water should be pumped from the river for stock.
- A statement to the effect that the Declarations will not affect the exercise of native title rights and interest must be included in the statutory instrument of Declaration, and within discrete Codes, so that assessable activities are considered against their potential to impair native title rights and interests.
- If the Background Paper is to have any role in the assessment of regulated activities, then it needs to be redrafted to reflect the significant long-term interest of the Gangalidda and Garawa peoples and their cultural responsibility to care for country.

- The Proposed Declarations should be amended to include reference to the Aboriginal cultural values of the Settlement Creek catchment area and to Beames Brook.
 - The High Preservation and Preservation Areas should be enlarged in order to offer effective protection over time, and the DNRMW should consult further with the Gangalidda and Garawa Peoples to ensure that development pressures, poor inter-departmental coordination, and scant monitoring and review, do not continue to result in the degradation of the Settlement catchment and Beames Brook.
 - Extend the High Preservation Area for the coastal fringe of the Gregory River wild river area so that it meets with the proposed Settlement Creek High Preservation Area. This would ensure blanket protection of the Southern Gulf Aggregation coastal wetlands that extend from the eastern part of Settlement Creek High Preservation Area to the Nicholson/Gregory High Preservation Area.
 - The areas covered by existing activities should not be excluded from the High Preservation Area. The High Preservation Area should remain in place for other users and future uses.
 - The role of the Gangalidda and Garawa and Waanyi Peoples in primary conservation management of the Declaration Areas should be clarified, and DNRMW should support Indigenous management of the areas through the development of an "Indigenous Natural and Cultural Resource Management Plan". Support should also be provided for an Indigenous ranger program and contract teams for fire and weed management.
 - DNRMW should ensure that the draft Code is not weakened and that the objectives of the *Wild Rivers Act* are achieved."
12. In making submissions in respect to the four Wild River declarations in the southern Gulf of Carpentaria, the Traditional Owners noted the following:
- Traditional Indigenous activities such as camping, fishing, hunting and conducting ceremonies and traditional fire management are not subject to wild river requirements as they do not constitute development.
 - A wild river declaration once made will not affect native title, cultural heritage, or the functioning and operation of the *Aboriginal Cultural Heritage Act 2003*.
 - Grazing, fishing, eco-tourism, outstation development and indigenous cultural activities can all still occur within a declaration area. Any permanent camp site or residence, including any eco-tourism development, should be set back from waterways by 200 metres.
 - Developments such as intensive agriculture, animal husbandry, in-stream dams and weirs, surface mining and aquaculture should be restricted in the High Preservation Areas.

THE CLCAC'S RANGER PROGRAM

13. In 2007 the CLCAC formally established its Land & Sea Management Unit as an extension of its role as a native title service body. Current and prospective

Aboriginal ownership of significant areas of land in the Gulf Region means that Traditional Owners have both the opportunity and responsibility to manage and protect their traditional lands.

14. The CLCAC's Land and Sea Unit undertakes land and sea management activities that enhance the protection and management of natural and cultural resources in the southern Gulf of Carpentaria area for the long-term benefit of Traditional Owner groups and communities. It also aims to build on these activities in the future to establish and maintain fee-for-service initiatives that generate sustainable employment and economic development opportunities for Traditional Owners and contribute to effective land and sea management.
15. The Land and Sea program currently has 22 full-time Indigenous rangers in three ranger units at Burketown (Gangalidda and Garawa Rangers), Normanton and Mornington Island. The ranger programs are supported by professional and administrative staff, including a Land and Sea Manager, Coordinators and Project Officers, located at Burketown, Normanton and Cairns.
16. The CLCAC's Land and Sea Unit undertakes a range of projects funded through Commonwealth and State Government programs which include the Wild River Rangers program funded by the Queensland Department of Environment and Resource Management, with 4 Wild River Rangers employed in Normanton and 6 employed in Burketown.
17. Projects currently underway within each of the four Wild River declaration areas using funding obtained from the Wild River Rangers program include:
 - Weed surveys and on-ground weed control activities
 - On-ground feral animal control and management
 - Fire management
 - Biodiversity surveys
 - Patrols for ghost nets impacting on wild river catchment values such as turtle populations
 - Riparian corridor management
 - Traditional knowledge collection and transfer in relation to natural resource management
 - Community education and extension activities, including work with schools on cultural and environmental aspects of land and sea management



18. The natural resources of the areas covered by each of the four Wild River declaration areas include eucalyptus woodlands in inland areas through

lowland coastal plains, rivers and seasonal wetlands. It includes extensive mangrove forests, vast salt pans, savannah grasslands and estuaries. The area is particularly significant for the extent and continuity of its wetlands and its importance as a rich breeding habitat for many waterbird and shorebird species, and encompasses many areas of high cultural significance to Traditional Owners.

19. Mangrove forests, containing 27 species of mangrove, are particularly important as nursery grounds for many marine species that Traditional Owners depend on and that are essential to commercial and recreational fisheries.
20. Threats to the health of these resources include invasive plants such as rubber vine, mimosa, parkinsonia, mesquite, prickly pear and bellyache bush, and invasive animals such as wild pigs and feral cats. Control of these threats, and other management activities such as fire management, is important for long-term health and sustainability of the natural resources of the area. A lack of scientific knowledge of the biodiversity of the area makes Traditional Knowledge and further research important components of successful management.
21. The benefits of the CLCAC's Wild Rivers Ranger Program include:
 - It has emerged as one of the most successful Indigenous employment programs in the Gulf in terms of enthusiasm and low attrition rates, rapidly growing skill sets and ability to implement high quality land and sea management work.
 - It enables the blend and recognition of traditional and Western science and for this framework to be put into practice.
 - It has benefits for the wider community through improving management of natural and cultural resources, and through providing employment and contributions to maintaining culture and being a source of pride for Traditional Owners.
 - The skills developed through the land and sea management activities provide The Rangers regularly visit local schools and provide much needed role models to children.
 - the possibility of providing fee for service land management activities at a cheaper cost than other agencies located outside the region, and act as a sound base for expansion of land and sea management programs with the ability to achieve significant landscape scale results.

VALIDITY OF THE BILL

22. The Bill relies on the Commonwealth's legislative powers under paragraph 51(xxvi) of the Constitution and on any other express or implied power of the Commonwealth capable of supporting its enactment.⁴ The Bill purports to be a "special measure" for the advancement and protection of indigenous people.⁵

⁴ Wild Rivers (Environmental Management) Bill 2010, s.4(1).

⁵ Wild Rivers (Environmental Management) Bill 2010, s.4(2).

23. The Bill would appear *prima facie* to be a valid exercise of the Commonwealth's legislative power in providing a benefit to Aboriginal people and could be a special law for the people of a race deemed by the Parliament to be necessary.
24. The Bill attempts to go further, however, by attempting to limit its operation to "native title land". Section 5 of the Bill provides:

The development or use of native title land in a wild river cannot be regulated under the relevant Queensland legislation unless the Aboriginal Traditional Owners of the land agree.

25. This section has the possible broader effect of impacting on the operation of the *Native Title Act 1993* by prohibiting the regulation of the use and development of 'native title land' without the consent of the native title holders. The CLCAC has no objection to this. There is some difficulty posed, however, by the failure of the Bill to clearly define 'native title land'. In particular:
- Section 3 of the Bill defines "native title land" as meaning "*land in which native title exists*". It is not entirely clear whether the intention is to limit the operation of the Bill to land where a positive determination of native title has been made, or whether it is to also include land where there exists a registered native title claim. The right to negotiate provisions of the *Native Title Act 1993* operate in respect to both situations.
 - "Native title land" does not appear to include by definition waters which may be the subject of a native title determination or native title claim.
26. The lack of clarity in the definition of "native title land" is further complicated by the fact that section 5 refers to the need for agreement to be obtained by the "Aboriginal Traditional Owners". This term is not defined in the Bill and is not referred to in the *Native Title Act*.
27. It is difficult in these circumstances to understand the intent of the Bill and, in particular, its effect on the operation of the *Native Title Act*. If it is the Bill's intent to bring the operation of the regulatory scheme established by the *Wild Rivers Act* within the ambit of the future act regime of the *Native Title Act* (which the CLCAC supports), then sections 3 and 5 will need to be amended accordingly.
28. It should also be noted that it is not clear what effect the Bill will have, if any, on the operation of the Commonwealth's *Environmental Protection, Biodiversity and Conservation Act 1999* and the CLCAC notes that the operation of this Act may restrict certain development proposals in any case.

CONCLUSION

"The majority of the people (in the southern Gulf of Carpentaria) would rather have the sustainable rivers so we can continue as we have for thousands of years to draw our food and nourishment from those rivers, rather than see a few Aboriginal people financially benefit at the expense of the rest of us being left in a dust bowl."⁶

⁶ Murrandoo Yanner, Gangalidda People representative as quoted by ABC news at <http://www.abc.net.au/news/stories/2009/04/20/2547012.htm>.

29. Economic opportunities and advancement for Traditional Owners in the Gulf must go hand-in-hand with best-practice environmental strategies as endorsed by western science and with recognition and practice of Indigenous knowledge that has ensured the protection of the Gulf waterways for generations. Traditional Owners in the CLCAC's region believe that they can preserve a unique and unspoilt ecosystem while also allowing Indigenous self-determination and providing local employment initiatives. Preserving the Wild Rivers and promoting Indigenous jobs is not a dichotomy. The CLCAC Ranger program is evidence of this.
30. Traditional Owners want to avoid unsustainable short-term economic growth and instead focus on long-term effects that are environmentally sustainable. Industries and agriculture have already wreaked havoc on Australia's fragile landscape in just 220 years of European settlement.
31. There have been comments about the difficulties that have been or will be experienced by traditional Owners in trying to get through bureaucratic "red tape" when submitting a development application in a Wild River declaration area. This is a legitimate concern. The Government should provide funding and resources to any traditional owner who with the support of his or her community wants to propose a sustainable development in a Wild River area and needs help to make the proper application and get through the necessary red tape.
32. The CLCAC urges the Senate Legal and Constitutional Affairs Committee to take into account the concerns raised above and submits that:
 - a. the Bill should be substantially amended to ensure its intent is clear; and
 - b. the Commonwealth should focus on supporting the implementation of indigenous ranger programs, including those funded by the Wild Rivers program.

