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The Secretary  
Senate Legal and Constitutional Affairs Committee  
Parliament House  
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## **INQUIRY INTO THE WILD RIVERS (ENVIRONMENTAL MANAGEMENT) BILL 2010**

The Wild Rivers (Environmental Management) Bill 2010 was previously subject to a senate inquiry, which reported on June 22 2010. The Bill was passed by the Senate on the same day. We refer this inquiry to the previous submissions made by Balkanu Cape York Development Corporation, the Cape York Land Council and the Cape York Institute to the Senate inquiry, and to the current House Standing Committee on Economics. All address the substance of the Wild Rivers (Environmental Management) Bill 2010.

Following the proroguing of parliament for the 2010 federal election, the Wild Rivers (Environmental Management) Bill 2010 was re-introduced into the Senate in February. The Bill contained amendments, which this submission will address.

Before addressing the changes to the Bill, it is important to correct assertions made by some commentators, MPs and opponents of the Bill.

- The Wild Rivers (Environmental Management) Bill 2010 does not overturn the Wild Rivers Act 2005 (Qld), nor does it overturn or “revoke” wild river declarations. The Act and existing wild river declarations will remain. The federal Bill will nullify the application of a wild river declaration on Aboriginal land and not allow future wild river declarations to regulate Aboriginal land unless there is agreement with indigenous landowners;
- The Bill is not a right to veto a declaration of a wild river, but an exclusion of the application of wild river declarations to the owners of Aboriginal land if no agreement exists.
- The Bill does not only apply to Cape York, it applies to those lands which are defined by the Bill as “Aboriginal land” throughout Queensland.

- The Bill will not remove environmental regulation where agreement to a wild river declaration is not reached. The wide range of other state and federal environmental regulations will continue to apply.
- The Bill will not threaten the employment of existing wild river rangers. The Bill will not revoke the existing wild river declarations.

### Changes to the Wild Rivers (Environmental Management) Bill 2010

#### 1. A definition of Aboriginal land

The definition includes the various types of Aboriginal land in Queensland. This definition is similar to the definition of Indigenous land under the *Vegetation Management Act 1999* (Qld). It is also noted that the *Commonwealth Carbon Credits (Carbon Farming Initiative) Bill 2011* includes a definition of ‘land rights land’ which will include those lands listed in the Wild Rivers (Environmental Management) Bill.

Large areas of land granted to Aboriginal people to provide for economic development opportunities are subject to wild river declarations on Cape York. The *Aboriginal Land Act 1991* (Qld) recognises that “land is of spiritual, social, historical, cultural and economic importance to Aboriginal people”. The application of the Bill to Aboriginal land reflects the tenure position of land in Cape York and other areas of Queensland. It is within Commonwealth power to legislate because these tenures relate to Aboriginal people and land is held for their benefit alone under these tenures. Native title may co-exist on tenures that are categorized as Aboriginal land, however protecting native title alone will not itself achieve the objective of the legislation. It is essential to expand the Bill beyond native title land to include Aboriginal lands to ensure that the latter is treated the same as native title land because:

- Legislation which applies only to native title is meaningless if native title holders cannot pursue economic development opportunities if wild river restrictions continue to apply to co-existing statutory Aboriginal landholders;
- The development approval process for native title holders under Queensland legislation, particularly where there is non-exclusive native title, is unclear. There is greater certainty of process where the holders of the underlying Aboriginal tenure progress a development approval with the consent of the native title holders rather than vice versa;
- Native title may have been partially or completely extinguished on some Aboriginal lands and therefore these lands would be excluded from the protection of economic development opportunities; and
- Aboriginal lands in Queensland are often dedicated for the benefit of a broader group of indigenous people than the native title holders. For example, the beneficiaries of Aboriginal lands may be “Aborigines particularly concerned with the land”, and

include people who “live on or use the land or neighboring land”. Many of the beneficiaries of Aboriginal lands would be excluded from any benefit of provisions which applied to native title holders alone.

## 2. A definition of “owner” of land

A definition of the “owner” of land has been included to provide clarity for the purpose of reaching agreements and to clarify that the owners of native title land are the persons with a registered or determined native title claim.

## 3. Indigenous Land Use Agreements

The new provisions of the Bill clarify that agreement with native title holders may be obtained through the registration of an Indigenous Land Use Agreement (ILUA) under the native title act.

## 4. Protection of employment

The new Bill includes provisions to protect the employment of persons engaged to assist in the management of a wild river area. It is understood that the main purpose of this provision is to protect the employment of the indigenous wild river rangers. It should be reiterated that the Bill will not result in the removal of existing wild river declarations. These rivers will continue to be subject to the provisions of the Wild Rivers Act and the need for land management will remain.

Attached is a description of the operation of the Wild Rivers Act and Wild River declarations which reinforces our concerns about the excessive complexity and transaction costs of the Wild Rivers regime.

### **Some developments subsequent to the previous Constitutional and Legal Affairs committee report**

In the previous report of the Constitutional and Legal Affairs committee into the Wild Rivers Environmental Management Bill the committee received evidence alleging a breach of process by the Queensland Government in the making of the 2009 wild river declarations. The committee considered this matter in its report.

Firstly we would like to point out an error in the committee’s report in relation to the statutory requirements that the minister must follow in making a wild river declaration. The committee’s report stated in para 2.65 that the process includes “the making of a decision whether to declare a wild river area”. For clarification, the committee should note that section 15 of the Wild



Rivers Act requires the Minister to either declare the wild river or decide not to proceed with declaration of the wild river. Importantly it is the Minister who declares the wild river.

In its report the Committee stated:

“Balkanu advised that information it obtained under Freedom of Information request does not evidence the existence of any document by which Minister Robertson made the 2009 declarations, leading Balkanu to conclude ‘that such an instrument does not exist’

In response to these concerns, the Queensland Government denied that there had been any breach of process. At the Cairns public hearing, a representative stated that ‘the full statutory process .....was absolutely followed’ “.

The committee report then stated that in an answer to a question on notice, the Queensland Government elaborated:

“ All relevant material was provided to the Honourable Craig Wallace MP on 18 February 2009. These materials were again submitted to [the] Honourable Stephen Robertson MP on being sworn into office.

The Minister began actively considering these matters and was briefed by departmental officers.....

On 1 April 2009, the Minister signed the final decision to seek approval by Governor in Council to declare the Archer, Stewart and Lockhart Basins as wild river areas... This decision was made pursuant to section 15 of the [Queensland Act]”.

The Committee report also stated:

“A copy of the Ministerial Briefing Note bearing the Ministers approval (on 1 April 2009) was included in the Queensland Government’s submission”

Since the report by the Committee there have been further developments which relate to this matter. These developments have been:

- Under Right to Information Legislation the Cape York Land Council has obtained a copy of the Ministerial and Executive Correspondence System (MECS) record for CTS 02637/09 (attached). This document does not record on 1 April the Ministers office receiving CTS 02637/09 nor a signed copy of this document having returned to the Department or Executive Council Team prior to Governor- in-Council approval.
- In response to Questions on Notice from Kelly O’Dwyer through the House of Representatives Standing Committee on Economics hearing, the Queensland



Government has advised that the “Ministers office” signed CTS 02637/09 on 1 April 2009 rather than the Minister himself having signed the document. The Queensland Government stated the following (emphasis added):

“CTS 02637/09 was forwarded to the Minister’s office on 1 April 2009 by the Deputy Director General. Exact times are not available but, CTS 02637/09 was signed by the **Ministers office** on 1 April 2009. This was provided to the Executive Council Team on 1 April 2009”

We assert that there are serious doubts about the accuracy of the evidence provided by the Queensland Government to both the Senate and House of Representatives inquiries into the Wild Rivers (Environmental Management) Bill. We strongly recommend, for the accuracy of the record, that the Constitutional and Legal Affairs committee seek clarification from the Queensland Government of the following matters:

- (a) Did Minister Stephen Robertson himself receive and sign the briefing note CTS 02637/09 on 1 April 2009 ? If not, on what date and at approximately what time did Minister Robertson sign CTS 02637/09. If Minister Robertson did not sign the document, who signed on his behalf ?
- (b) On what date and at approximately what time was Minister Robertson provided with the briefing material which included all of the properly made submissions and the results of public consultation ?
- (c) On what date and at approximately what time did Minister Robertson actually read the public submissions and the results of community consultation ?

Thank you for the opportunity to make a submission to this inquiry.

Yours sincerely

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Richie Ahmat  
Chairman, Cape York Land Council

Gerhardt Pearson  
Executive Director, Balkanu

*Encl (1)*