

SUBMISSION TO SENATE LEGAL AND CONSTITUTIONAL COMMITTEE

INQUIRY INTO WILD RIVERS (ENVIRONMENTAL MANAGEMENT) BILL 2010

**Submitted for Property Rights Australia by Ron Bahnisch
(Chairman) and Joanne Rea (Treasurer)**

Ron Bahnisch

Joanne Rea

Introduction

Property Rights Australia has a long association with Noel Pearson's Cape York Institute.

John Purcell, representing landowners, as the chairman of the Cattlemen's Union of Australia, negotiated (with Noel Pearson and Environmental groups) the Cape York Heads of Agreement which recognised indigenous peoples' rights to land.

However, the environmental groups walked away from this agreement. John Purcell, described by Noel Pearson as "an honourable man", subsequently in disgust accepted nomination to become chairman of Property Rights Australia, a group set up to fight for rights to land for both white and indigenous peoples.

Environmental groups have used the political bartering of green preferences to get peninsular, gulf and channel country rivers declared wild.

This strategy is driven in part by a commitment outlined in a paper by Dr Carol Booth and Dr Barry Trail, published in 2008, *Conservation of Australia's Outback Wilderness* prepared for Wild Australia Program Pew Environmental Group and The Nature Conservancy:

"Australia stands out in having huge areas where native vegetation still stands and rivers still run freely."

"Australia has the largest remaining wild areas of any country".

It is easy to sell a vision of pristine rivers to an electorate living in leafy suburbs in the distant south east corner of the state.

However these rivers represent an untapped resource for the indigenous and white people who live there.

Proponents for preservation insist that no more "Murray Darlings" must be created.

Rivers which annually drain large volumes of water to the sea bear no comparison to the Murray Darling.

The Wild Rivers Bill takes away indigenous rights to development in zones, first proposed as a kilometre each side of main rivers, then the tributaries, then basin wide declarations taking in several separate rivers draining to the sea.

The Act

The Wild Rivers Act 2005 is to preserve the natural values of rivers that have all or almost all of their natural values intact.

In order to do this the framework allows for

- (a) High preservation areas
- (b) Preservation areas
- (c) Floodplain management areas
- (d) Subartesian management areas

We will now address the High Preservation Areas.

These are areas one kilometre either side of a river or tributary, associated wetlands and can include flood plains. Thus the High Preservation Areas cover a considerable area of country. Much of the discussion centres on the presumption of not “locking up” country to development. This fails to recognise the very large percentage of the area that is a High Preservation Area.

Most farming operations in High Preservation Areas can continue in their present form. However change of use or intensification is not allowed. Change from grazing to cropping is not permitted. It is regrettable that a feature of farming and grazing is declining terms of trade. What returns a profit in one timeframe may not in a future timeframe. This inevitably means that flexibility and diversification are essential to maintain economic sustainability.

Noel Pearson is constantly asked by various commentators if any applications for development have been turned down.

The Premier and her minister have consistently claimed that no applications have been refused.

The legislation is written in such a way that most applications in High Preservation Areas (which is most of it) would not be accepted and therefore do not exist.

For example:-

“42 Effect of classification on particular development applications

(1) This section applies to a development application for—

(a) a material change of use of premises for agricultural or animal husbandry activities mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 2, item 11;

or

(b) operational work for agricultural or animal husbandry

activities mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 10.

(2) Subsection (3) applies if any part of the application relates to development in the high preservation area in a wild river area.

(3) Despite the *Integrated Planning Act 1997*, section 3.2.1—

(a) **the application is taken not to be a properly made**

application for that Act; and

(b) **the assessment manager must refuse to receive the application.”ⁱ**

This general refusal not to “refuse” the application but “refuse to receive the application” applies to a wide range of activities, most likely to be small scale and attempted by indigenous and non-indigenous landowners.

This general exemption from **accepting** applications in the High Preservation Areas also applies to

- Applications made under the Coastal Protection and Management Act 1995
- Applications for material change of use under the Integrated Planning Act 1997 including “development”, “any environmentally relevant activity” such as “dredging material” or “extracting rock or other material”ⁱⁱ
- Applications in relation to aquaculture or waterway barrier works in wild river areas
- Applications in relation to marine plants in wild river areas
- Development applications in relation to wild river areas
- Applications made under the Vegetation Management Act 1999 in wild rivers areas
- Applications in relation to works in declared fish habitat in wild rivers areas
- Applications under the Fossicking Act 1994
- Applications in relation to “operational work” such as a dam or weir under the Integrated Planning Act 1997 except under specific provisions
- Applications in relation to interfering with overland flow water in wild river areas under the Integrated planning Act 1997
- Applications in relation to removal of quarry material in wild river areas under the Integrated Planning Act 1997

In all there are thirteen Acts named in the Wild Rivers Act which must be complied with in addition to the Wild Rivers act 2005

The Act is designed to pre-empt and discourage any applications in the High Preservation Areas as they will not even be **accepted**. Any questions about how many have been turned down are irrelevant.

MINING

One of the declared aims in this area is to protect the area from mining.

We note however that several exemptions have been for large scale mining operations and feel that the ban on small scale operations is not targeting high impact operations. Large Scale mining operations are able to ask for an exemption where smaller impact farming and grazing activities will not even be assessed.

45 Exemption of projects from application of this Act

(1) This Act does not apply to the following projects—

- (a) the Aurukun project;
- (b) the PNG pipeline project.

(2) Also, to the extent another Act regulates or prohibits the carrying out of an activity or the taking of a natural resource because of a declaration or a moratorium under this Act, the other Act does not apply to a project mentioned in subsection (1).”

We also note that forestry will be assessed with relevant conditions attached. It appears that some activities are anointed while others with potentially less impact will not even be assessed.

EXTRACTS FOR REFERENCE

46 Meaning

Coastal Protection and Management Act 1995

1 Section 73—

insert—

‘(3) If any part of the application relates to a wild river area, the application is of no effect.’.

2 After section 104—

insert—

‘104A Applications in relation to wild river areas

‘(1) This section applies to a development application for operational work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 5.

‘(2) Subsection (3) applies if any part of the application relates to operational work in a wild river area other than operational work for specified works.

‘(3) Despite the *Integrated Planning Act 1997*, section 3.2.1—

(a) **the application is taken not to be a properly made application for that Act; and**

(b) **the assessment manager must refuse to receive the application.**

‘(4)

‘73AA Development applications in relation to wild river areas

‘(1) This section applies to a development application for—

(a) a material change of use of premises mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 2, item 1; or

(b) development mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 5, item 4.

‘(2) Subsection (3) applies if any part of the application relates to—

(a) development in a wild river high preservation area; or

(b) an environmentally relevant activity mentioned in the *Environmental Protection Regulation 1998*, schedule 1,

Schedule 1 (continued)

34

Wild Rivers Act 2005 No. 42, 2005

item 19 (dredging material) or 20 (extracting rock or other material) in a wild river preservation area.

‘(3) Despite the *Integrated Planning Act 1997*, section 3.2.1—

(a) **the application is taken not to be a properly made application for that Act; and**

(b) **the assessment manager must refuse to receive the application.**

‘(4) **2 Part 5, division 3A, subdivision 2, after s 76D—**
insert—

‘76DA Applications in relation to aquaculture and waterway barrier works in wild river areas

‘(1) This section applies to a development application for—

(a) a material change of use of premises mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 2, item 8; or

(b) operational work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 6.

‘(2) Subsection (3) applies if any part of the application relates to development in a wild river high preservation area.

‘(3) Despite the *Integrated Planning Act 1997*, section 3.2.1—

(a) **the application is taken not to be a properly made application for that Act; and**

Schedule 1 (continued)

44

Wild Rivers Act 2005 No. 42, 2005

(b) **the assessment manager must refuse to receive the application.**

‘(4) Subsection (5) applies—

(‘76DB Applications in relation to marine plants in wild river areas

‘(1) This section applies to a development application for operational work, mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 8.

‘(2) Subsection (3) applies if any part of the application relates to operational work in a wild river area other than operational work—

(a) for specified works in the area; or

(b) that is a necessary and unavoidable part of installing or maintaining works or infrastructure required to support other development for which a development permit is not required or, if a development permit is required, the permit is held or has been applied for.

‘(3) Despite the *Integrated Planning Act 1997*, section 3.2.1—

(a) **the application is taken not to be a properly made application for that Act; and**

(b) **the assessment manager must refuse to receive the application.**

‘(4) ‘76DC Applications in relation to works in declared fish habitat areas in wild river areas

‘(1) This section applies to a development application for—

(a) building work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 1, item 2; or

(b) operational work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 7.

‘(2) Subsection (3) applies if any part of the application relates to development in a wild river high preservation area other than development for specified works.

‘(3) Despite the *Integrated Planning Act 1997*, section 3.2.1—

(a) **the application is taken not to be a properly made application for that Act; and**

(b) **the assessment manager must refuse to receive the application.**

‘(4) Section 55—

insert—

‘(2) However, the chief executive must refuse to grant a licence for the getting of quarry material in a watercourse or lake in a wild river area.’.

5 Section 56—

insert—

‘(2A) However, the chief executive must refuse to grant a permit, licence, lease or other authority or enter an agreement or contract in relation to the getting of quarry material in a watercourse or lake in a wild river area.’.

Fossicking Act 1994

1 Section4 Section 22A—

insert—

‘(2A) However, a vegetation clearing application is not for a relevant purpose under this section if the development applied for is—

(a) mentioned in subsection (2)(a), (f), (g), (i) or (j); and

(b) proposed for a wild river high preservation area.’. **12 Section 266—**

insert—

‘(4) The application is taken not to have been made if any part of the application—

(a) relates to a wild river area; and

(b) relates to an activity other than—

(i) an activity necessary to control non-native plants or declared pests in the area; or

(ii) an activity necessary for specified works in the area; or

(iii) an activity that is a necessary and unavoidable part of installing or maintaining works or infrastructure required to support other development for which a development permit is not required or, if a development permit is required, the permit is held or has been applied for.’.

13 Section 280—

insert—

‘(3) However, if any part of the application relates to a wild river area, the application is taken not to have been made.’.

14 Section 814, after subsection (2)—

insert—

‘(2AA) Despite subsection (2)(a)(viii)—

(a) a provision of a regulation that permits the destruction of vegetation, **14 Section 814, after subsection (2)—**

insert—

‘(2AA) Despite subsection (2)(a)(viii)—

(a) a provision of a regulation that permits the destruction of vegetation, excavation or placing of fill if it is carried
Schedule 1 (continued)

72

Wild Rivers Act 2005 No. 42, 2005

out under a prescribed guideline does not apply to a wild river area; and

(b) subsection (1) continues to apply to the destruction of vegetation, excavation or placing of fill in the area.

‘(2AB) Subsection (2AA) applies despite the *Wild Rivers Act 2005*, section 17(2)(b).’.

15 Section 851(2)—

omit, insert—

‘(2) However, if the decision for which the notice was given is in relation to a water resource plan, a resource operations plan or a wild river declaration, the interested person may appeal only to the extent a different decision, consistent with the plan or declaration, could have been made.’.

16 Section 966(1)(c)—

omit, insert—

‘(c) operational work in a drainage and embankment area; or’.

17 After section 966—

insert—

‘966A Applications in relation to operational work in wild river areas

‘(1) This section applies to a development application for operational work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 3, other than paragraph (d).

‘(2) Subsection (3) applies if any part of the application relates to—

(a) operational work in a wild river high preservation area that is**‘966A Applications in relation to operational work in wild river**

areas

‘(1) This section applies to a development application for operational work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 3, other than paragraph (d).

‘(2) Subsection (3) applies if any part of the application relates to—

(a) operational work in a wild river high preservation area that is a dam or weir; or

Schedule 1 (continued)

73

Wild Rivers Act 2005 No. 42, 2005

(b) other operational work in a wild river high preservation area—

(i) not related to a water entitlement or water permit;

and

(ii) not for town water supply.

‘(3) Despite the *Integrated Planning Act 1997*, section 3.2.1—

(a) **the application is taken not to be a properly made application for that Act; and**

(b) **the assessment manager must refuse to receive the application.**

‘(4) Subsection (5) applies—

(a) **‘966B Applications in relation to interfering with overland flow water in wild river areas**

‘(1) This section applies to a development application for operational work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 3(d).

Schedule 1 (continued)

74

Wild Rivers Act 2005 No. 42, 2005

‘(2) Subsection (3) applies if any part of the application relates to operational work in a wild river floodplain management area other than operational work—

(a) for specified works in the area; or

(b) stated in the wild river declaration for the area to be assessable development for which an application may be lodged.

‘(3) Despite the *Integrated Planning Act 1997*, section 3.2.1—

(a) **the application is taken not to be a properly made application for that Act; and**

(b) **the assessment manager must refuse to receive the application.**

‘(4) **966C Applications in relation to removal of quarry material in wild river areas**

‘(1) This section applies to a development application for development mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, table 5, item 1.

Schedule 1 (continued)

75

Wild Rivers Act 2005 No. 42, 2005

‘(2) Subsection (3) applies if any part of the application relates to development in a wild river area.

‘(3) Despite the *Integrated Planning Act 1997*, section 3.2.1—

(a) **the application is taken not to be a properly made application for that Act; and**

(b) **the assessment manager must refuse to receive the application**

Exemptions
Aurukun Project
PNG pipeline
Cape Alumina-Wenlock Basin
Chinalco Bauxite mine

The country involved in the preservation areas one kilometre each side of main rivers often represents the only usable land on the flood plain and the most fertile. The area next to the river is the highest and safest and the only firm ground in the wet season.

The only feasible way to handle the exclusion zones would be to fence them off to avoid them becoming a haven for feral cattle. They would become infested with weeds (lantana and rubbervine), a haven for vermin (wild pigs), a potential fire hazard and an ugly reminder of the folly of man's intervention.

Politically expedient decisions made in the leafy suburbs of a distant capital cannot be made to fit reality.

Aboriginal people, indeed all landowners, must be returned the rights to make development decisions on their own land.

ⁱ Wild Rivers Act 2005 (Q)

ⁱⁱ *Wild Rivers Act 2005 No. 42, 2005*