



Australian Government

Department of Families, Housing,  
Community Services and Indigenous Affairs

Deputy Secretary

Mr Tim Watling  
Committee Secretary  
Senate Legal and Constitutional Committees  
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Parliament House  
Canberra ACT 2600

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Dear Mr Watling

**Re: Inquiry into Wild Rivers (Environmental Management) Bill 2011**

I write to the committee on behalf of the Australian Government departments listed in Appendix 1 of the attached joint Submission. The Submission is a copy of the Wild Rivers Interdepartmental Committee Submission to the House of Representatives Standing Committee on Economics Inquiry into Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010.

The IDC Submission is a comprehensive examination of existing regulation and legislation relevant to Wild Rivers and issues of economic development in Queensland, the impact of the Bill if passed, and options for facilitating economic development to benefit Indigenous people and protect the environmental values of undisturbed river systems.

*Existing barriers to Indigenous economic development*

- The primary barriers to economic development for Indigenous peoples in Cape York, as elsewhere, include lack of infrastructure and cumbersome leasing and land tenure arrangements.
- Indigenous people continue to suffer extreme levels of disadvantage with poor education and underdeveloped skills and capacity, resulting in high levels of unemployment.

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- These barriers are exacerbated by the lack of effective and coordinated governance arrangements for government activity.

#### *Legislation and Opposition Bill*

- The submission discusses the impact of the Wild Rivers legislation by identifying development opportunities that have arisen because of Wild River declarations under the Act, including the Queensland Government's Wild River Rangers program. It considers the impact of declarations on prospective economic projects of small to medium as well as large enterprises. This section also discusses mining resources and the mining industry.
- The submission outlines concerns about the Opposition Bill including drafting limitations, concluding that the Bill will give greater rights to native title holders in Wild River areas compared to pastoralists and other landowners and greater rights than native title holders in other areas of Australia.

#### *Existing opportunities for Indigenous economic development*

- There are already significant opportunities for economic development for Indigenous residents in Cape York including mining, conservation and natural resource management, given Cape York's vast natural resources and strong Indigenous natural resource management expertise. Tourism is developing and has great potential. There are also opportunities in agriculture and the cattle industry, though the submission notes water availability and infrastructure limitations could hinder the potential of the cattle industry in Cape York.

#### *Current government activity in the Cape York region*

- Government is the largest employer in Cape York.
- Discussion of government activity is grouped under the six policy themes of the Office of Northern Australia's *Framework for the sustainable development of northern Australia*.
- Key programs include: Caring for our Country, including Indigenous Rangers; Cape York Welfare Reform trials; Cape York Aboriginal Australian Academy; and the Mossman Gateway project.

#### *Need for coordinated strategic approach in Cape York*

- The submission identifies the need for better co-ordination and a strategic approach to Cape York and the Gulf, possibly under the new *Framework for the sustainable development of northern Australia* through the Office of Northern Australia. This work will be progressed within government.

In addition to the submission and in acknowledgement of the Senate Committee's more restrictive Terms of Reference, I offer the following observations on behalf of the IDC.

The new Senate Bill is described in the long title as an Act to protect the interests of 'Aboriginal people' in place of 'traditional owners' in the previous Senate Bill. However,

the term 'Aboriginal people' is not defined. The new Senate Bill also contains additional terms which were not included in the previous Senate Bill. Some of these are either unclearly defined or have implications that are unclear. Complexities arise in regard to the new terms relating to 'Aboriginal land', 'owners' and 'native title holders'. Some land could fall within more than one category of 'Aboriginal land' and could therefore have multiple categories of 'owner' for that land. This raises questions of how differences of opinion between groups of owners will be dealt with under the new Senate Bill. It is also unclear whether the process for obtaining agreement of native title holders could also extend to 'owners' of land other than native title holders of that land. Potentially, a situation may arise where another type of 'owner' could refuse to consent to a declaration which native title holders may support.

The new Senate Bill also sets out additional intentions of the Parliament. The first is that the Act would 'protect the rights of traditional owners of Aboriginal land' within wild rivers areas. The previous Senate Bill stated that the intention was to 'protect the rights of traditional owners of native title land' within wild rivers areas. The second is an obligation on the Commonwealth Government to provide employment to those who lose their employment as a result of the enactment of this legislation. It is unclear whether this is intended to confer an entitlement and raises questions about what kind of work is being promised, including pay, conditions and location.

The new Senate Bill includes additional regulations to prescribe the procedures for obtaining the agreement of the 'owner' of land, as well as the continued employment of Aboriginal and other people in the implementation of the new legislation. It is unusual for legislation to refer such a major part of the operation of the legislation to regulations.


The Wild Rivers (Environmental Management) Bill 2011 defines Aboriginal land as including seven different types of land title in Queensland, including native title land and other types of Aboriginal leases and freehold. While many areas of land in Queensland have established traditional owners according to Aboriginal law and custom, it is also possible that a different group of Aboriginal people could claim native title over that same area because of some other connection with the land. It is also possible that two separate groups (one of them, perhaps, also the traditional owners of the area) claim native title over the same parcel of land. This raises questions about what the Bill expects to occur in cases like this in terms of gaining consent.

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. 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.

The Bill outlines a transitional provision whereby a current Wild River declaration will lapse if a new declaration with agreement from the owner of the Aboriginal land (which

could be any number of Aboriginal land holders as defined in the Bill) is not put in place within six months. In the case of a Wild River declaration in which there are native title holders, the Bill outlines how to obtain their agreement – it describes registering an Indigenous Land Use Agreement (ILUA) under the *Native Title Act 1993* (Cth). However, in light of the transitional provision contained in the Bill, problems may be encountered where the ILUA took longer than six months to be put in place.

I welcome any further questions you may have and I will be happy to provide you with additional information.

Yours sincerely 

Andrew Tongue 

15 April 2011