

25 February 2011

The Committee Secretary
House of Representatives Standing Committee on Economics
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: economics.reps@aph.gov.au

Dear Sir

Inquiry into indigenous economic development in Queensland, including issues surrounding Queensland's *Wild Rivers Act 2005*

This is a submission to the House of Representatives Standing Committee on Economics in relation to its inquiry into indigenous economic development in Queensland.

This submission is made by Wik Projects Ltd, a not-for-profit company formed for the benefit of Wik and Wik Waya people whose traditional country is near Aurukun on the west Cape York Peninsula. Aurukun is situated immediately to the north of the area which is the subject of the *Archer Basin Wild River Declaration*. Additional background information about Wik Projects is contained in the attachment.

The area which is the subject of the *Archer Basin Wild River Declaration* is nearly 14,000km² of pristine wetland wilderness formed by the Archer, Love, Kirke and Kendall Rivers, most of which is low lying and subject to inundation during the wet season. This is an area of high biodiversity, with almost all its native vegetation undisturbed, which provides habitat to numerous threatened and endangered plant, bird and animal species. The area is of particular ecological and cultural value and significance not only to Aboriginal people but, in our view, sufficient to warrant World Heritage listing.

The comments in this submission relate to the Wik and Wik Waya and their aspirations for their country. An important principle, within traditional culture, is that only the traditional owners of particular country can legitimately speak for that country. *We do not purport to speak for others' country, because we have no right to do so.*

1. Summary of our submissions

Wik Projects submits that:

- there are significant barriers to indigenous economic development in remote areas like Aurukun (including market failure, welfare dependency, social factors and serious limits on traditional owners' rights to their own country), but the *Archer Basin Wild River Declaration* is not one of them;
- environmental protection measures, such as the *Archer Basin Wild River Declaration*, have the potential to contribute significantly to economic



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- development by supporting traditional owners to protect and take advantage of the unique environmental and cultural values of the area;
- the *Wild Rivers (Environmental Management) Bill 2010* ignores (and indeed adds to) a range of complexities associated with traditional ownership and consent and ignores important principles of indigenous governance – complexities which need to be addressed and principles that need to be reinforced; and
 - the priority focus of government should be on measures to support and empower indigenous people *at the local level* to participate in developing and implementing proposals for the sustainable economic development of their traditional country and in managing their natural and cultural resources.

Our reasons for these submissions are discussed in more detail below.

2. Barriers to indigenous economic development

There can be little dispute that decades of passive welfare dependency have worsened the plight of indigenous Australians. Similarly, there can be little dispute that greater indigenous participation in the economy is a fundamental prerequisite to change. The Wik and Wik Waya believe that sustainable economic development on their traditional land is their pathway out of passive welfare dependency towards socio-economic standards similar to other Australians. We want *both* economic development *and* to ensure that our country, its environment and our culture are protected. We do not see these goals as necessarily inconsistent – indeed, it is our responsibility, as traditional owners, to make sure they are not.

In our submission, the principal barriers to greater economic participation include factors such as:

- **limited markets and limited opportunities** – flowing from remoteness from major centres and markets for goods and services and a small and disadvantaged population with very limited access to capital;
- **lack of work-readiness and capacity to realise opportunities** – flowing from a range of social factors prevalent in remote indigenous communities which need to be addressed, primarily by Aboriginal people themselves (but with support from government and others);
- **limits on indigenous people's rights to their own country** – native title is not an effective enabler of economic development and, without full ownership of their land or appropriate resources and support for them (and their organisations) *at the local level*, traditional owners are largely precluded from playing an active role in developing and implementing proposals for their country; and
- **ongoing disempowerment and disengagement** – indigenous people's day-to-day experience is of a seemingly endless stream of State and Commonwealth government departments, agencies and service providers coming to their community to deliver a similarly seemingly endless stream of changing programs and initiatives designed (with the best of intentions) by others to address their needs, but many of which are attempts to implement national (or state-wide) policies without sufficient regard to the specific challenges of particular communities in a way in which the role of indigenous people remains a passive one.

Against this background, measures to protect the environment (such as the *Archer Basin Wild River Declaration*) in fact have the potential to contribute significantly to sustainable

economic development. They are particularly important because they have the potential to support indigenous people:

- in their role as traditional owners, custodians and stewards of their country; *and*
- in taking of advantage of the unique environmental and cultural values of that country, supporting indigenous employment and enterprise development in circumstances where other prospects are scarce.

A sensitively-developed and well-managed eco-tourism industry could offer significant opportunity in terms of employment and training and transition to work in the wider world, as well as providing an economic return which supports ongoing cultural and natural resource management of the area by its traditional owners. These opportunities are already being pursued by Wik and Wik Waya people through their own business, Aurukun Wetland Charters (see attachment), and this is assisted by a regulatory framework which protects the environmental values of the area. On the other hand, we are yet to identify any economic development opportunity which would be supported by traditional owners that would be precluded by the *Archer Basin Wild River Declaration*.

3. Initiatives to address barriers to indigenous economic development

If we are to make the transition from passive welfare dependency towards greater economic participation, a strategic approach is needed which:

- recognises the particular values of, and opportunities offered by, our country, and the aspirations of its traditional owners;
- addresses, as effectively as possible, the barriers referred to above; and
- recognises that market mechanisms alone cannot be relied on to generate better outcomes, and that government will continue to have a significant role in the foreseeable future; but
- *empowers and supports* Aboriginal people to take a principal role in designing and implementing their own futures.

In his *Six Monthly Report: December 2009 – August 2010*, the Commonwealth Co-ordinator-General for Remote Indigenous Services stressed 'the need for community empowerment, strong ownership, community driven solutions for community owned problems and acknowledging the opportunities to work better with the existing leadership in different forms in each community'. In his view:

... insufficient attention has been paid to integrated support for building community and organisational governance capacity in the priority communities. [G]overnments need to work in genuine partnership with communities, and communities need to be supported and empowered to drive real change on the ground.

In this context, Wik Projects submits that the Committee's recommendations should focus on the need for:

- review and reform of the policy framework and funding and service delivery models applied by all levels of government to ensure that indigenous people are supported in taking responsibility for their own welfare and in engaging, as principals, in developing their own futures;
- strong, well-governed *local* indigenous organisations as the foundation for participation and engagement by indigenous people, and that effective indigenous governance and engagement requires government support and resources for these organisations; and

- review and reform of the *Native Title Act* and State land tenure legislation and their operation to ensure, first, that indigenous people have tenure to their traditional country which supports their aspirations and enables sustainable economic development in which they are active participants and, secondly, that indigenous governance principles and processes are appropriately recognised and supported.

4. **Specific concerns about the *Wild Rivers (Environmental Management) Bill 2010***

The *Wild Rivers (Environmental Management) Bill 2010* may superficially be attractive for Aboriginal people because it purports to give traditional owners something which no other legislation (including the *Native Title Act*) gives them: an absolute right to say 'no' to something affecting their country.

Unlike the *Native Title Act*, which does not give traditional owners a right to say 'no' to *development* on their country, the Bill would permit an absolute veto on the *regulation* of such development by the *Wild Rivers Act*. A right for traditional owners to veto the application of a law of otherwise general application would, so far as we are aware, be unprecedented.

Wik Projects endorses the principle that traditional owner consent should be obtained to proposals affecting country. Indeed, as would be clear from the comments above, it advocates for the *active participation* of traditional owners in the development and implementation of proposals affecting their country. But issues surrounding traditional ownership, consent and how it is obtained are complex, and will only be exacerbated by provisions of the Bill which purport to address but in fact gloss over those issues.

Despite its superficial attractiveness, then, the Bill raises serious issues and concerns:

- ***Who is the 'owner'?***

Even after a determination of native title under the *Native Title Act* and the registration, under that Act, of a corporation to hold native title on behalf of traditional owners, it is still necessary to identify which *particular* families and individuals have a right to speak for *particular* country, and whose views should (as the views of primary traditional owners) prevail (after appropriate discussion and consultation) over those of other (secondary and tertiary) traditional owners. These are matters for legitimate discussion and negotiation among traditional owners, who need to be supported in developing and using processes to resolve those matters themselves.

The Bill provides no such support. It ignores the complexity of these issues, simply providing for traditional owner consent to be given to a wild river declaration by the 'owner' of 'Aboriginal land', and by going on to define 'owner' with reference to the tenure to the land concerned. The definition of 'Aboriginal land' contains overlapping categories of tenure, with the result that particular land is likely to have multiple 'owners' for the purposes of the Bill, but makes no effort to address the issue of what happens if these multiple 'owners' disagree.

In the case of the area of the *Archer Basin Wild River Declaration*, the area concerned is both 'land where native title exists' (paragraph (b) of the definition of 'Aboriginal land' in clause 3 of the Bill) and land which is within 'the Aurukun Shire lease' (paragraph (g) of that definition). Although the position is unclear, one possible interpretation of the Bill is that the consent of both the Ngan Aak-Kunch Aboriginal Corporation RNTBC (under paragraph (b) of the definition of 'owner' in that clause) *and* the Aurukun Shire Council (under paragraph (h) of that definition) will be required. This is problematic, as a matter of principle,

not only because Council would effectively be able to veto a consent by the native title holders themselves but also because Aurukun Shire councillors are elected by majority vote of all electors resident in the Aurukun Shire, and therefore cannot be said to be representative of the *specific* traditional owners of the *specific* area the subject of the wild river declaration. Within traditional culture, Council has *no right to speak for country*. It is certainly *not* regarded by Aboriginal people as the owner of that country, and should not have a right to veto the necessary consent to the *Archer Basin Wild River Declaration*.

- ***How is traditional owner consent obtained?***

The Bill contemplates traditional owner consent to a wild river declaration being obtained by the registration of an indigenous land use agreement under the *Native Title Act*. Although the Bill and that *Native Title Act* recognise the role of the Ngan Aak-Kunch Aboriginal Corporation RNTBC in formalising consent, that organisation (in contrast to the native title representative body) lacks staff, resources and organisational capabilities of its own to facilitate the kind of participatory process necessary before that consent can, under the *Native Title Act*, be formalised. In practical terms, it would be dependent on the allocation of resources by the native title representative body (which receives funding from the Commonwealth) to enable that process to occur. Yet that body, the Cape York Land Council, and its sibling organisations have an existing, public position opposing the *Archer Basin Wild River Declaration* (despite the contrary views of *specific* traditional owners of the area the subject of that declaration who, within traditional culture, are the only people with the right to speak for that country). The Bill would only further empower those organisations, without any safeguards to ensure that appropriate indigenous governance principles are followed.

- ***Inherent bias, in practice, against continuation of existing declarations***

The Bill would provide for existing wild rivers declarations to cease to have effect unless traditional owner consent to them is given within six months of the Bill becoming law. This would deliver a ticking time-bomb for the *Archer Basin Wild River Declaration* in circumstances in which the only organisation with a formal role and resources to defuse that time-bomb by facilitating traditional owner consent – the representative body under the *Native Title Act* – already has a publicly stated position opposing that declaration. In addition, the procedural requirements of the *Native Title Act* and the Native Title Tribunal mean that it would, in practical terms, be impossible to register an agreement within the six months timeframe in any event.

As discussed above, there is considerable complexity associated with issues of traditional ownership and who legitimately speaks for country. Aboriginal people need to be supported, at the local level, in working through these complexities themselves – a process which, in accordance with traditional culture, will involve lengthy discussion, consideration, persuasion and, hopefully, ultimately consensus. This is a process which could take considerably longer than six months, even if local organisations were appropriately supported and resourced in their own right to facilitate it.

There *are* very significant issues about indigenous governance, which are by no means unique to the *Wild Rivers (Environmental Management) Bill*, which are fundamentally intertwined with issues surrounding traditional ownership, consent and indigenous social and economic engagement and participation. A failure to address these issues, not only in the Bill but also in the context of the *Native Title Act*, relevant State land tenure legislation and in the broader policy and funding context, represents a serious policy failure which needs to be addressed and not perpetuated. In our submission, proponents of the Bill cannot legitimately argue that it is appropriate for the

Commonwealth to use its constitutional powers to override State wild rivers legislation (because that State legislation supposedly ignores the views of indigenous people) unless they also acknowledge this policy failure and make genuine efforts to address it.

5. Conclusions

Indigenous people need to engage as principals in designing and implementing their own futures, and to participate more fully in the economy and the management of their traditional country. Rather than the *Wild Rivers Act*, the real barriers to that engagement and participation are factors such as endemic passive welfare dependency; limited markets and opportunities; lack of work-readiness or capacity to realise opportunities; and the limited rights which traditional owners have to their own country. Real progress in addressing these barriers will only be possible when governments and others recognise the importance of strong, well-governed *local* indigenous organisations as the foundation for participation and engagement by indigenous people, and that effective indigenous governance and engagement requires support for and resourcing of these local organisations.

The Wik and Wik Waya want *both* economic development *and* to ensure that their country, its environment and their culture are protected. We do not see these goals as necessarily inconsistent. As part of what should be a strategic approach to the management of a pristine and precious area in which traditional owners play a principal role (and which should include, in due course, the creation of an indigenous protected area and ultimately an application for World Heritage listing), the *Archer Basin Wild River Declaration* has the potential to contribute significantly to better environmental, cultural, social and economic outcomes.

Yours faithfully



Gina Castelain
Managing Director

Attachment – About Wik Projects

Wik Projects is a not-for-profit company limited by guarantee formed in 2007 for the benefit of Wik and Wik Waya people, whose traditional country is near Aurukun on the west Cape York Peninsula.

As an entity controlled by traditional owners, Wik Projects was established to negotiate, facilitate, design and implement appropriate business, social, economic, environmental, cultural development and infrastructure projects on Wik Waya traditional country, the western Cape region and beyond. Wik Projects is the registered cultural heritage body, under the *Aboriginal Cultural Heritage Act 2003* (Qld), for that country. One of its key roles is to facilitate engagement between its traditional owner constituency and the public, private and third sector organisations with which they deal.

Wik Projects' vision is for Wik and Wik Waya people to be able to harness their natural abilities to live productive, imaginative lives where they can move between their own country, mainstream Australian life and the wider outside world. It is a vision of people who have cohesive, resilient families; strong cultural and personal identities; social justice; enhanced wealth and abundance; and better work and life choices.

The establishment of Wik Projects, and its role, reflects a development philosophy under which Wik and Wik Waya people will:

- make decisions for ourselves about social, economic and environment issues affecting us and our traditional country, with the objectives of incrementally improving our socio-economic status to a level similar to that of other Australians *and* looking after the land and sea so they will continue to provide for our present and future generations, and
- pursue economically viable projects that create long-term employment and returns to traditional owners in key sectors of the regional economy (eg construction, mining, tourism, forestry/timber production and environmental and natural resource management).

Wik Projects currently provides leadership, management and administrative support to two local indigenous businesses: Aurukun Earthmoving (which provides contract earthmoving services, mainly to Rio Tinto's Weipa bauxite mining operations and to Queensland's Main Roads) and Aurukun Wetland Charters (which operates a purpose-built, 12-metre catamaran constructed by Aboriginal people in Aurukun that offers cultural tours and fishing charters on the Aurukun wetlands). Wik Projects is also pursuing other sustainable economic development initiatives, including a proposal to harvest timber from the bauxite mining lease areas north of Aurukun which would otherwise be bulldozed and burnt in front of the mining operation. As these businesses develop and grow, they will offer employment and training opportunities for local Aboriginal people, as well as financial returns to support education, community development, cultural protection and natural resource management.

The organisation's strategic priorities include:

- **representation:** to continue and to enhance its role in representing the interests of Wik and Wik Waya people, and to facilitate better engagement between them and public, private and third sector institutions and organisations with which they deal,
- **enterprise development:** to continue to promote and support indigenous enterprise development and existing local indigenous businesses,
- **employment and training:** to continue to develop and implement programs to support employment and training for Aboriginal people from Aurukun,

targeted through individual case pathway management and support by Aboriginal people for Aboriginal people,

- **education:** to continue to develop and implement programs to support better educational outcomes for young Aboriginal people from Aurukun, also targeted through individual case pathway management and support, and with clear linkages between education and economic participation in and around Aurukun and beyond,
- **culture and country:** to continue to develop and implement programs for natural resource management and protection, consistent with traditional owners' connection to country and sustainable economic development principles, and
- **governance and ownership:** to continue to facilitate the development of indigenous ownership and governance structures and processes which will enable full and active participation by Wik and Wik Waya people in designing and implementing their own futures.