Name: Stephen Donald Brech,

Date: 30 -03 -10

To:

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600
30 March 2010

Dear Secretary,

Inquiry into the Wild Rivers (Environmental Management) Bill 2010 [No 2]. Thank you for the opportunity to make submission to the Committee's inquiry into the Wild Rivers (Environmental Management) Bill 2010 [No 2] ("the Bill") which seeks to over-ride the Queensland Government's Wild Rivers Act 2005.

This is a covering page with the relevant details, including Contents

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Title

A Personal View Of Wild Rivers - Putting A Prism Inside 'Pandora's box'

submission to the Wild Rivers (Environmental Management) Bill 2010 [No.2]

A submission in supported of the Bill;

(A) There were errors in the process of enabling the Wild Rivers Act 2005 ('the Act').

The Queensland State Government clearly failed to fully take into account the traditional owners in relation to legislative & non-legislative documentation relating to; reasoning, style, wording & layout.

(B) Erroneous language and perceptions implied in various documents pertaining to 'the Act' illustrates the inappropriateness of the legislation the Bill seeks to overturn.

At the very least documents show an unthinking, uncaring and skewed wording central to a flawed process putting conservation groups higher in the order of stakeholders than the Indigenous owners of the land. Were it wilful and pre-meditated I would have no trouble in saying it was racist, however the obvious efforts of some departmental staff show their failings are not racist, merely misguided. However, it is clear some omissions and errors are either insulting to Traditional Owners (TO's) and offensive to some degree. Some language and pictorial representations used highlight a larger and more systematic marginalisation of Indigenous stakeholders by political and economic elites from political parties in Australia.

(C) The failings of the consultation process,

Especially, in relation to the length of time of the consultation and the numbers of groups and individuals who were recipients of the consultation.

(D) The "Get Out Clause" systematically weakening "the Act"

In the Mineral Resources Act 1989 –Section 383 there is a clause negating Wild Rivers legislation

PRE-AMBLE

This submission will begin by considering and focusing on Mr Noel Pearson's (N.Pe.) view in relation to the Wild Rivers Act. After conversations with TO's from N.Pe home community I came to realise the full implications for Indigenous Australians of The Wild Rivers Act 2005.

As a past member of The Wilderness Society (TWS) & current member of The Queensland Greens I have listened to formal and informal presentations by TWS on the benefits of "the Act".

I had considered trying to set out all arguments in relation to the Wild Rivers Act. But after years of listening to various individuals and groups participating in public debate the complexity already present in many Queensland Government's Act's overlayed by "the Act" is even further complicated by Commonwealth Native Title legislation and Deed Of Grant In Trust (DOGIT) legislation (And its accompanying documentation). The many facets of "the Act" are further distorted by deep personal feelings invested by hundreds of individuals who have made public comment in various mediums. Until now I have made no public comment. I have been content to push for dialogue within the only political party I have ever or will ever belong to. However, personal dialogue has failed. The consequences of my public support for legislation introduced by Liberal & National parliamentarians is balanced by my view that the constitution of the political party I support has this to say on Indigenous culture.

2.7. Part b)

To recognise the cultural requirements of the original Australians and to assist in ensuring the achievement of Aboriginal land rights and self-determination.

The Queensland Greens Inc. Constitution[i]

I do not envy the task faced by those who sort and sift the various and complex submissions. Considering the views of all stakeholders in relation to the *Wild Rivers (Environmental Management) Bill 2010 [No.2*], will be a complicated task. It is akin perhaps, to shinning a light at a prism inside 'Pandora's box', then viewing the kaleidoscope of patterns and choosing the correct configuration to suit a view that may or may not be correct. My opinion, for what it's worth, is that the conservation value of the Act is minimal while its economic choke-hold will further restrict Indigenous development (that is the building of shops, homes and small business's) in the lives of Traditional Owners. At the same time making the lawyers who work for mining companies wealthy as vested interests skilfully play the 'mining game' at the expense of Aboriginal families, clan groups and individuals.

My skills are that of an educator and not a lawyer however as an informed member of the Queensland public I will start with an introduction regarding current legislation in relation to Indigenous "Development". Is it easy to start a business? Or to build a home if you are TO living on Cape York Peninsular. My questions are, what are the human impacts of the "The Act" & What are the consequences for current and future users of land on Cape York? And, how may 'the Act' impact upon the future direction for land holders, land users and the environment.

INTRODUCTION

i http://qld.greens.org.au/about-us/QldGreensConstitution.pdf/view?searchterm=Constitution

Noel Pearson (2001), has raised the issue of Aboriginal self-determination for many years. N.Pe. and the many organisations that use his skills and knowledge see the need to develop an Indigenous economy. Aboriginal Australians have largely missed out on the Western capitalist economy. It is quite obvious Indigenous Australians are in a marginalised position in Australian economic history. N.Pe argues, Aboriginal people have cultural assets and enterprise activities in their local informal domestic economies. He suggests that it is necessary to challenge and overcome the various socioeconomic barriers embedded in the macro-capitalist framework, so as to convert Indigenous assets from 'dead capital' to viable 'currency', and integrate them into the mainstream economy. A portion of these assets are the land rights held by Indigenous groups. The 'Act' suffocates Indigenous peoples capacity to secure loans, based on existing assets and engage flexibly in a range of transactions relating to land tenure, native title and the ability of individuals and groups.

'The Act' has even further politicised local informal; and culturally specific contexts of the Aboriginal community. 'The Act' overlays numerous other State Acts and Commonwealth laws. The legal, economic and property of Australia is different to that of…

> *"Aboriginal communities living on Aboriginal lands (though we own 'property') [Aborigines] are locked out of the Australian property system that enables capital formation. All of our assets, in the form of lands, housing, infrastructure, buildings, enterprises etc – are inalienable and have no capital value therefore. They cost (huge amounts of) money to develop and to replace and renovate – but they don't have a capital value. And billions of dollars transferred from government to Aboriginal communities end up in the form of dead capital: it cannot be leveraged to create more capital. We are therefore in a dead capital (poverty) trap….. This dead capital trap has valid cultural explanations. It is one of the consequences of (i) the communal nature of our traditional landholding title and (ii) the principle of inalienable land title (which may have had its origins in the common law, and has been given statutory force in relation to most forms of land title)….. It also has historical explanations: governments and missionaries maintained paternalistic policies which curtailed the ability of Aboriginal people to own or accumulate fungible economic assets……But there are also other reasons why we are laden with dead capital. The laws that govern our property and asset ownership (State lands legislation, native title legislation, Indigenous Land Corporation legislation, ATSIC legislation) make our assets un-fungible – beyond the protection of inalienability. Land title holding structures are unnecessarily complex and inefficient so that they make it too difficult to leverage value out of our assets. Two owners for one area of land (say land trusts holding inalienable freehold title to land and Prescribed Body Corporates holding native title to the land) make the land in-amenable to capital formation."*
>
> (Pearson 2001.)

Native Title Claims take up to six years to resolve[i] Imagine then, another layer of legislation like the 'Act' and its effect on an a claim already settled or on any of the other examples used by N.Pe.

In the document, **"From Hand Out To Hand Up, Cape York Welfare Reform Project, Aurukun, Coen Hope Vale, Mossman Gorge: Design Recommendations**, May 2007"[ii] (pp.353-355) N.Pe. gives an example in the Appendix. He uses a hypothetical baker. Imagine the layer of legislation were it to be built near a creek?

APPENDIX U:
CASE STUDY: LAND TENURE AND BUSINESS DEVELOPMENT IN HOPE VALE

Assume a resident of Hope Vale wants to set up a business within the township – a bakery. In addition to the ordinary legal and administrative steps required to set up a business, that person would have additional hurdles because of the multiple layers of law under which their community holds the land. The complexity of the legal structures and the number of ambiguous legal questions that arise out of these structures introduce uncertainty which is, in itself, a barrier to participation in a transactional economy.

In order to set up a business, and to be able to gain finance, the individual needs a most basic building block: security of tenure. They could not buy a piece of community owned land to set up a business on, so they would have to lease it from the trustees of the land, in the case of Hope Vale, those appointed by the Minister under the DOGIT (Deed Of Grant In Trust).

Securing a lease
Under the Land Act 1994 (Qld) which governs DOGIT land, the trustees would require 'in principle' approval from the Minister and then her endorsement of the lease. Once endorsement is given the lease must be registered under the Act (s 57, *Land Act 1994*). If the lessee wants to mortgage the land in order to raise capital, they need both trustee and ministerial approval (s 58, *Land Act 1994*). This approval is given based on whether the transaction is consistent with, and would facilitate or enhance, the purpose of the trust (s 59, *Land Act 1994*). This creates the possibility of conflict between the aims of individuals and the communal purpose of the trust, or between Minister and the trustees.

For example, Canadian courts have held leases to be invalid where Ministerial consent was given but the concerns of the land council were not adequately addressed by the Minister.179 This is not to mention the fact that a mortgage on a lease, even a long-term lease, is less valuable than freehold and that the lessee may find it difficult in practice to secure a mortgage over the property.180 Research in Canada has shown that Native Americans living on reserves have struggled to secure mortgages on leases within the reserve, even where the government has set up a bank 'of last resort'.181 The situation in Australia is not entirely analogous – the legislative regimes are not identical – but there are sufficient similarities (underlying inalienable title, limited permitted dealings with land) to suggest that similar problems may be faced in Australia.

While DOGIT land was meant to be transferred to communities under the *Aboriginal Land Act 1991 (Qld)* (ALA), thirteen years later, this transfer has not occurred. The eventual transfer of the land could create further legal uncertainty for anyone attempting to set up a business today – while the requirements under the ALA are similar to those under the Land Act, they are not identical.

If the land is held by the community in trust under the ALA, a lease may be granted by the

trustees, but what the lessee may do with that land is limited (ss 39, 76, ALA). In all cases, where a lease is granted by the trustees, the interests that may be created under that lease are limited. Crucially, a lessee cannot create an interest under that lease in favour of a non-Aboriginal person for a period over 10 years without Ministerial consent. That means, effectively, that if the lessee wants to get a mortgage, they need Ministerial consent. If the land is transferred as an Aboriginal lease under the ALA, further requirements are entailed: the trustees need Ministerial approval in order to mortgage or sublease the land, including approval of the specific terms and conditions (s 76(4), ALA).

Native Title

Then the erstwhile Hope Vale baker would have to consider the implications of native title over the land. Does native title exist over the land? If there has been no determination, might it exist? Even in Hope Vale, where there has been a consent determination in relation to native title,182 the township area was excluded from that determination, and the question of whether native title exists is a live one. Thus, native title is an issue, and the lease must be valid under the *Native Title Act 1993-1998* (NTA) if it is an act 'affecting' native title (s 227, NTA). Given that a lease grants exclusive possession, it is likely to affect native title. If this is so, they would then have to consider whether setting up the bakery is a past or future act under the terms of the NTA.

Although the lease of land for the bakery occurs well after 1 January 1994, it is possible that the lease, or the legislation enabling the lease, could be a past act within the definitions in the NTA (ss 228-232) – a negative check would have to be done in order to exclude this possibility. If it is a past act, compensation is most likely payable by the government (s 17, NTA), but the act will be valid (s 14, NTA).

It is more likely that, if the lease affects native title, it will be a future act, in which case the act provides different options to pursue (Part 2, Division 3, NTA). It may be, for example, that the act in question falls under the freehold test (s 24MA-MD, NTA), in which case the procedural requirements under the right to negotiate will be enlivened (s 25-44, NTA). The Minister may decide that the expedited procedures may be followed (s 32, NTA), but even these procedures require a 4 month notice period. If the regular procedure is followed, a far longer period of negotiations, including arbitration, may ensue (s 35, NTA).

In light of the above, or if none of the specific future act provisions of the NTA apply, the negotiation of an ILUA may be advantageous – or necessary. Assuming that there is no registered agreement in place outlining procedures to be followed (which in this case there is not), the process will depend on whether there has already been a finding of native title. If there has been a finding and a prescribed body corporate (PBC) created, the PBC can negotiate the agreement (under s 24BA-BI, NTA), following its own rules about consultation and consent with native title holders under the *Native Title (Prescribed Body Corporate) Regulations 1994.*

Where there is no PBC, the burden on the individual in proving that the agreement was made with the correct parties before registration is permitted is onerous: they must meet the notification requirements (leaving 3 months for objection) (s 24CH, NTA) and either have the agreement certified by the relevant Land Council or provide a statement that authorisation followed proper procedures under the act (s 24CG(3), NTA). The authorisation procedures have themselves been the source of significant litigation over the past 5 years.183 There are also significant administrative requirements under the Native Title (Indigenous Land Use Agreements) Regulations 1999, which contribute to the length of time required to prepare a

registration application.

This case study does not factor in a consideration of the politics or length of time that might be required to actually negotiate the agreement, the cost of legal advice, and the availability of legal advice for the community. Where a land council is overwhelmed with work on claims, they may not prioritise the negotiation of an ILUA – particularly where, as is likely, it falls outside the scope of its specific funding. Moreover, Hope Vale is in many senses a simple example. In an area where there is no claim underway, the native title group would first have to be identified – a process which typically takes 6–9 months of anthropological work and may involve legal challenges prior to engaging in the steps mentioned above.

References:

179 Tsartlip Indian Band v Canada 1999 172 FTR 160, para 56. The case is discussed in Flanagan, T. and C. Alcantara. 2002. 'Individual Property Rights on Canadian Indian Reserves' *Public Policy Sources*. No 60, Fraser Institute, 14-15.

180 Cf. Flanagan and Alcantara (2002) who discuss a similar problem in relation to First Nation peoples in Canada at 11-15.

181 See discussion in Owens, D. 2000. 'The Search for Aboriginal Property Rights'. *Policy Series*. No. 4, Frontier Centre for Public Policy, pp. 7-9.

182 Erica Deeral (On behalf of herself & the Gamaay Peoples) & Ors v Gordon Charlie & Ors [1997] 1408 FCA (8 December 1997).

183 See eg Moran v Minister for Land and Water Conservation for the State of NSW [1999] FCA 1637; Strickland v Native Title Registrar (1999) 168 ALR 242; Daniel v State of Western Australia (2002) 194 ALR 278; Lawson on behalf of the 'Pooncari' Barkandji (Paakantyi) People v Minister for Land and W

While Noel Pearsons work and that of numerous other Native Title lawyers focus on legislation to win social and economic justice for Indigenous people other stakeholders unimaginatively put the view that, *"Native Title should not be the only point of reference for the resolution of issues between the State and Indigenous communities*.""[iii] (TWS/QCC, [undated] p. 7).

I strongly disagree, so does the State Government.

Provided, is a link to a document TO's must use if they want to build a house on DOGIT land.

http://www.derm.qld.gov.au/nativetitle/pdf/ilar/ilar_ala_leasing_manual.pdf

Pages 20-22 clearly state the process by which an Aboriginal person or Aboriginal official body can build a house (develop their land). However, before building takes place a process (over a minimum two and a half year time-frame) is set out in the document describes the need for informed responsibility.

"**1.5 Informed responsibility**
To fulfil their responsibilities regarding leasing Aboriginal DOGIT land in an informed and effective manner trustees need to have comprehensive knowledge about the values of and appropriate uses for land, existing interests in land, the community opinion about proposed leases, and have internal policies relating to the leasing of land. Trustees should also raise the awareness of potential lessees about leasing options and processes.

Planning
Trustees should have access to comprehensive information about appropriate and desirable uses for Aboriginal DOGIT land and refer to this information when making decisions about granting a lease. A planning scheme, compliant with the *Integrated Planning Act 1997*, is the best source of information about land use suitability since the Act requires that planning schemes be developed through a thorough process involving extensive public participation to comprehensively identify existing values and constraints on land, and the desired outcomes of development. In the absence of a planning scheme, trustees should refer to whatever land use or community development plans exist for the Aboriginal DOGIT land (such as a total management plan) to check whether the land use and purpose of a proposed lease is consistent with community aspirations. If a well-developed land use plan does not exist, it is recommended that Aboriginal Shire Councils prepare a land use and development plan that identifies land that has constraints to development. These constraints may include, but are not limited to, land that:
• is flood prone or unstable
• is not serviced with water, sewerage, waste collection or other services and utilities
• has high cultural heritage values
• has high natural values such as being in a wild rivers catchment, a world heritage area, the habitat of a rare or threatened species, or subject to coastal management considerations
• is already used for another purpose
• is constrained by native title issues."

(DERN, 2008, pp.7-8)

Not withstanding that TWS's recommends that, *"Native Title should not be the only point of reference for the resolution of issues between the State and Indigenous communities*." The State government acknowledge that Native Title is a constraint upon TO's who want to build a house. The State Government also points out the "wild rivers" Act can be a constraint when building a house on DOGIT land.

As if to drive home the importance of the "Wild Rivers Act", the Queensland Government clearly requires Aboriginal Shire Councils, who act as the assessment managers prior to giving permission for a house to be built, to liaise with government referral agencies and seek advice on the "development application". Listed in order of importance are the "key Acts". Not all the Acts involved in building a house on DOGIT land, but the "key Acts". Note also that "the Act" takes precedence to Commonwealth legislation

They include, “but are not limited to:

1. ***Wild Rivers Act 2005***

   Aboriginal DOGIT land may be affected by the declaration of, or a moratorium over, wild river areas that place constraints on particular activities on the land. Any lease issued in a wild river area should be conditioned by the trustee so that activity on the leased land does not contravene the *Wild Rivers Act 2005.*

2. ***Vegetation Management Act 1999***

3. ***Aboriginal Cultural Heritage Act 2003***

4. ***2.2.3 Native Title Act 1993 (Cth)***

Building a house (developing) on DOGIT land may now be an even longer process.

----------END OF INTRODUCTION----------

PART A

(a) to point out the errors in the process of enabling the Wild Rivers Act ('the Act').

Example 1)

In this legislative document
http://www.parliament.qld.gov.au/view/publications/documents/research/ResearchBriefs/2005/200515.pdf

the following titles are referenced:

(a) 'Indigenous rights and interests in wild rivers'
(b) 'Why are we losing our Wild Rivers?'
(c) 'Healthy rivers mean a healthy economy'
(d) 'Wild Rivers'
(e) 'Let the Rivers Run Wild in Queensland'
(f) Submission on the Wild Rivers Policy: Explanatory Material and Draft Wild Rivers Bill 2005
(g) 'Caring for Queensland's Wild Rivers: Indigenous rights and interests in the proposed Wild Rivers Act', *A Native Title &Protected Areas Discussion Paper*

- They are all authored or co-authored by The Wilderness Society who are mentioned 16 times

- The former Mayor of Cairns and the former Cairns City Council is mentioned, so to, the Queensland Conservation Council (4 times) while "Mining" is mentioned over 40 times

- "The Cape York Council"(sic) is mentioned once. (presumably referring to The Cape York Land Council)

- Other Indigenous peak bodies = 0
- "Balkanu" = 0
- "Northern Land Council = 0
- "Cape York Institute" = 0
- Other council or local Indigenous government body mentioned = 0

- As a lay person I would assume the document was concerned with, where I could and could not mine. That conservation groups were speaking on behalf of all Indigenous peak bodies while media (*Cairns Post* 4 items, *Courier Mail* 3 items, *ABC*, 4 items) reported on the politics of the issue assessed the local and State ramifications from a political viewpoint.

- It is abundantly obvious that Indigenous organisations were marginalised in relation to Queensland State government research into Wild Rivers.

PART B

(B) Erroneous language and perceptions implied in various documents pertaining to 'the Act'

Example 1)

According to the ResearchBriefs/2005/200515.pdf 'Framework document' on page 32

"Wild rivers and their catchments have traditionally provided a focus for spiritual and cultural activities for Indigenous people. The Conservation Guidelines Report noted the importance of involving Indigenous people in the management of wild rivers.

Conservation groups acknowledge that traditional Indigenous owners have the right to be involved in managing the natural and cultural values in their lands and in decisions that affect the use of those lands and their associated natural resources."

- No mention of economic worth
- No mention of possession in relation to Native Title.
- The focus is spiritual & cultural not economic, not administrative
- Involvement is important, however it is clear from these paragraphs, not vital.
- Conservation Groups (TWS, QCC, CAFNEC, FotE, ACF?) acknowledge Indigenous people being involved, again no mention of Indigenous economic rights, responsibilities or ownership.
- These two paragraphs reveal an unthinking, uncaring and skewed mind-set and do little credit to its author(s).

[iv]**A Framework to Protect Wild Rivers in Queensland – the Wild Rivers Bill 2005 (Qld)**

On 24 May 2005, the Wild Rivers Bill 2005 (Qld) (the Bill) was introduced into the Queensland Legislative Assembly by the then Minister for Natural Resources and Mines, the Hon Stephen Robertson MP. It seeks to protect the last of Queensland's free flowing rivers which have most, or all, of their natural values intact The Bill will provide a structure for the declaration of a river as a 'wild river'. The Bill will not, of itself, designate certain rivers to be 'wild rivers'. Rather, it will provide a process for making a wild river declaration which will involve extensive consultation with communities before the declaration is finalised. Existing legislation (13 Acts) will be amended to control development activities and resource allocations in declared wild river areas. These regulatory measures will also take into account community input Certain activities, such as agriculture, animal husbandry, vegetation clearing, mining, and construction of dams and weirs, that have an immediate or substantial impact on the more sensitive 'high preservation area' will not be permitted. Activities and uses in other parts of the wild river area will be carefully managed. From the time the public notification of the intention to declare a wild river is given, a moratorium can be imposed to stop 'panic' development, clearing of vegetation, interfering with water, and other potentially damaging activities in the relevant area.

Nicolee Dixon

Research Brief No 2005/15

Example 2)

A comparison of two documents

The first document lists 23 items the Department feels will affect Indigenous people. The Department mentions Didgeridoos twice. In comparing the DERM WR17 "Wild Rivers- guide for Indigenous communities" to DERM WR19 "Wild Rivers-guide for landholders" lists 20 items. Note that WR17 does not mention vehicles, agricultural activities or domestic gardens. It does though highlight what the Department obviously sees as areas important to Aboriginal people.

"Wild rivers—guide for Indigenous communities"[v] DERM, December 2009, (WR17)

Didgeridoos There are no wild river restrictions on the collection of didgeridoo or boomerang pieces on freehold or leasehold land in a wild river area.

Fish traps There are no wild river restrictions on the use of traditional fish traps.

Forest products

There are no wild river restrictions on the collection of certain forest products including:

- honey
- native animal life (includes nests, shelters)
- timber products generally taken from fallen trees (fuel wood, sawn wood and sleepers)
- fossil remains and relics
- fallen or salvage timber for didgeridoo and boomerang blanks, craft wood and boat knees.

Traditional activities There are no wild river restrictions on traditional Indigenous activities such as camping, fishing, hunting and conducting ceremonies or traditional fire management.

"Wild rivers—guide for landholders" DERM, December 2009, (WR19)[vi]

Agricultural activities

Agricultural activities are defined in the Wild Rivers Act and generally involve re-shaping the land, cultivating soil, planting crops, or using the land for horticulture or viticulture purposes.

Domestic gardens

There are no wild river requirements on the establishment of domestic gardens. However, if the area of the garden is large it could be considered an agricultural activity as defined under the Wild Rivers Act

Fodder cropping

Fodder crops are those crops grown primarily to produce supplementary feed for livestock, e.g. grain or pasture. Establishing new agricultural areas to grow high risk species or converting existing areas to grow high risk species are not permitted in a wild river area.

Vehicle tracks and roads

Vehicle tracks and roads are permitted as they are considered specified works under the Wild Rivers Act. A riverine protection permit is required if the track or road crosses a watercourse—see *Crossings.*

It is clear from the examples in each document, the Queensland Government sees the wants and needs of Indigenous people as focusing on making didgeridoos "camping" and fishing and hunting. Whilst "landholders" will be focusing on vehicles and agricultural activities. As late as last month I spoke with a TO who said he felt this sort of wording in government documentation was racist and unhelpful.

Example 3)

"Wild rivers: information for communities in a wild river area, August 2009"[vii]
DERM

On page 5 of this document the State Government provide a picture of Indigenous men performing a ceremony in front of people who are taking photographs. The perception is that of tourists taking photographs. However the Department label the photograph as "Traditional cultural activities".

A Traditional Owner pointed out to me how culturally insensitive this mislabelling was. One is left with the impression that the Department feels that Aboriginal men wearing loin cloths is the reality for Indigenous TO's living on Cape York. Were it a picture of a Aboriginal man using a chainsaw to clear a tree from a road so that he and his family can drive their four wheel drive to the closest medical centre to visit relatives I suspect some Department officers would know it to be more realistic but this may dampen the longing of some in the Department to portray Indigenous people without technology and in theatrical and less powerful position.

PART C

The failings of the consultation process.

Example 1)

This is an extract from a letter, sent by Wik elders "imploring" the Minister to include the "Aurukun Bauxite project" in "the Act". It highlights clearly how Queensland State government officers failed to make clear during the consultation process to key Indigenous stakeholders the exact nature of "the Act". I quote in part;

> "...*responses of the people to the Wild Rivers Legislation and proposal for our beloved Archer River and Basin turn to fear, suspicion and deep concern, however, when it is pointed out to us that the very extensive legislation (which is difficult for our people to read and understand) contains a startling exemption clause in the middle of it which effectively says that the massive Aurukun Bauxite Project does NOT have to abide by the legislation. Our concern is even further exacerbated when we notice that the Indigenous summary guide (also difficult to read) that was brought in by the people from the Department of Natural Resources and Water for the purpose of consultation with the people contains no mention of this worrying exemption clause, nor did the people from the Department of NRW make any mention of this most disturbing part of the legislation."*
>
> **The Council of Church Elders, Aurukun Uniting Church**
>
> Reverend Silas Wolmby and his wife Elder Rebecca Wolmby, Elder Pat Pootchemunka (Mayor of Aurukun), Pastor Ralph Peinkinna and his wife Elder Caroline Peinkinna, Elder Anne Woolla[viii]

Example 2)

The Government gave less than 4 months for consultation, leading up to the State election in Nov 2008.

Example 3)

I have obtained a FOI release. In it the two key people who were involved in the consultation from the State for the Archer, Lockhart and Stewart River basins state

"Ross and I strongly disagree with this paragraph. It is open to interpretation whether we did consult widely and extensively. What is consultation to one may not be consultation to another. I am not confident we have addressed concerns as we wouldn't be going back to Balkanu with the DG if this were the case. There was not significant support for wild rivers. It was a mixed viewpoint. Significant indifferences".

There is anecdotal evidence supporting the view of these Department staff members. In photographs and video footage I have seen there is clearly antipathy and desent to "The Act" on Cape York. The quote from the attached FOI PDF document clearly show failings in the vaunted consultation process.

Part D

The "Get Out Clause" systematically weakening "the Act" (highlighted)

At **http://www.austlii.edu.au/au/legis/qld/consol_act/mra1989200/s383.html**

MINERAL RESOURCES ACT 1989 - SECT 383

383 Grant of mining tenements in wild river areas

(1) If a mining tenement, other than an exploration permit or a mining lease, is granted over land that includes a wild river area, the following parts of the wild river area are excluded from the land to which the mining tenement applies--

(a) the wild river high preservation area;
(b) nominated waterways in the wild river preservation area.

(2) If an exploration permit is granted over land that includes a wild river area, exploration may be carried out--

(a) to the extent the exploration permit applies to the wild river high preservation area, other than watercourses and lakes--using only low impact activities; and
(b) to the extent the exploration permit applies to watercourses and lakes in the wild river high preservation area or nominated waterways--using only limited hand sampling techniques.

(3) If a mining lease is granted over land that includes a wild river area, mining lease activities must not be carried out--

(a) on the surface of the land in the wild river high preservation area; or
(b) in a nominated waterway.

(4) Subsection (3)(b) does not apply if--

(a) the mining lease is, or is included in, a project declared under the State Development and Public Works Organisation Act 1971, section 26, to be a significant project; and
(b) the report evaluating the EIS for the project shows--
(i) the natural values of the wild river, included in the wild river preservation area, will be preserved; and
(ii) it is not reasonably feasible to take the natural resource under the lease by underground mining; and
(iii) the value of the natural resource is sufficient to warrant the grant of the lease over the nominated waterway.

(5) Subsections (1) to (4) do not apply to a mining tenement--

(a) for a project for which a special agreement Act was enacted; and
(b) application for which was allowed, under the special agreement Act, to be made.

(6) Subsection (1) does not prevent a single mining tenement applying to the land not excluded under subsection (1).

(7) The holder of a mining tenement is not required to pay rental on land excluded under this section.

I will now highlight the important section of 383 which states (My emphasis in Green and underlinned)

Subsection (4) Subsection (3)(b) does not apply if--

(a) the mining lease is, or is included in, a project declared under the State Development and Public Works Organisation Act 1971, section 26, to be a significant project; and
(b) the report evaluating the EIS for the project shows--
(i) the natural values of the wild river, included in the wild river preservation area, will be preserved; and
(ii) it is not reasonably feasible to take the natural resource under the lease by underground mining; and

Subsection 4 part (b) Number (iii) states,

the value of the natural resource is sufficient to warrant the grant of the lease over the nominated waterway

Therefore if a mining company can lobby the Government and offer enough financial incentive in the form of royalties "the Act" is ignored, mining can take place in High Preservation area or any other area the mining company wants to mine, perhaps damaging or destroying the environment while "the Act" disallows any Aboriginal or any other land owner from acquiring rights or royalties.

Closing Statement

My final Statement builds upon a Ministerial Press release[ix] by the Minister for Natural Resources, Mines and Energy and Minister for Trade, The Honourable Stephen Robertson dated; Monday, February 08, 2010 and titled, "Tony Abbott's Wild Rivers stunt". I include the document in its entirety for three reasons.

The first, to highlight the Ministers words pertaining to mining. To quote from the release,

"*Activities such as mining, grazing, fishing, eco-tourism, outstation development and indigenous cultural activities can all still occur*"

This legislation does not stop future mining in any form if the royalties are right. The second is to illustrate the language used by the Minister in relation to Aboriginal land use and the thinking at the very pinnacle of the Queensland government. His words highlight entrenched racial stereotypes and clearly point to a larger and more systematic marginalisation of Indigenous stakeholders by those involved in the day to day running of our society. In the real world, both the political and economic, society is inhabited by real people and not characters of Aboriginal people described in his press release.

Of course, Minister Robinson is a Labor Minister. I suggest though, what ever political party holds the Ministry of Natural Resources Mines and Energy we would get condescending, racist and unthinking statements such as, *"The Wild Rivers Act also ensures traditional indigenous activities such as hunting and fishing can still occur and native title rights are also protected and respected."* Perhaps the Minister would be happier if Aboriginal men were dressed in red loin cloths and spent their lives standing on one leg by rivers holding a spear as they watched Aboriginal women gathering seeds in the bush?

I am proud to say that I have taught many Indigenous people, from the Torres Strait and Cape York. I have taught members of the Mabo, Sailor and Passi families. I have mentored and taught members of the Wik Ngathan, Kuku Yalanji, Djabugay and Yidindji Nations, both adults and children. Some of those people are working in academic areas and in health related jobs. Others are undertaking TAFE and university education. Thousands of people live and work in Far North Queensland. A proportion of them are Indigenous. I want them, their family members and future generations of Traditional Owners to be able to make a living however they choose.

If Aboriginal people decide their interests are best served by working as fitters & turners or as truck drivers or scientists those occupations will become *"traditional indigenous activities".* If our society is set on conservation or stopping people from making money from their land, then communities have the ability to halt individual developments on a case by case basis. I urge that this Bill be passed because to unilaterally take away the economic future of the Traditional Owners of our country is bad legislation, bad for Cape York Communities and will destroy the economic future of individuals across the Cape.

The third reason for using this document and my final argument, in relation to this submission comes directly from the Minister, "Even if Abbott succeeded in his challenge to Queensland's Wild Rivers Act, the Commonwealth's Environmental Protection, Biodiversity and Conservation (EPBC) Act would still exist and, in the absence of state legislation, would have a significant influence on how and what development could take place in Cape York."

Minister for Natural Resources, Mines and Energy and Minister for Trade
The Honourable Stephen Robertson

08/02/2010

Tony Abbott's Wild Rivers stunt

Tony Abbott's attempt to overthrow Queensland's 2005 Wild Rivers Act is clearly a political stunt and it demonstrates his inability to balance environmental needs and economic development, Natural Resources, Mines and Energy Minister Stephen Robertson said today.

"When Tony Abbot sat around the cabinet table in 2004, he would have put up his hand to endorse the Howard Government's 'celebrated' National Water Initiative requiring all states and territories to identify and protect high conservation water systems for their ecological values," Mr Robertson said.

"Queensland's 2005 Wild Rivers Act, which was supported by the Liberal and National parties, gives expression to that requirement protecting the conservation and ecological value of some of Australia's last remaining pristine rivers."

"Every year we publicly announce what rivers we intend to declare as Wild Rivers and we are always open and transparent with that," he said.

Mr Robertson said Queensland's Wild Rivers Act was a visionary approach to protecting some of Australia's most ecologically healthy river systems.

"There are few countries in the world that can boast having rivers in such naturally, pristine condition," he said.

"The Queensland Government's over-arching intent is to ensure that any new development within a wild river basin does not detrimentally impact on those natural values that make these rivers so special.

"Does that mean opportunities for job creation in indigenous communities grind to a halt as has been alleged? The answer is an emphatic no.

"It is important to point out that Tony Abbott misleads us by conveniently ignoring the fact that it is not just the Queensland Government that has passed laws to strike a balance between the environment and development rights in Australia.

"Even if Abbott succeeded in his challenge to Queensland's Wild Rivers Act, the Commonwealth's Environmental Protection, Biodiversity and Conservation (EPBC) Act would still exist and, in the absence of state legislation, would have a significant influence on how and what development could take place in Cape York."

"That's the same EPBC Act that Tony Abbott would have also supported around the cabinet table and in parliament as a Minister in the former Howard Government."

Mr Robertson said an informed debate encouraging improvements in indigenous health, education, and employment and business opportunities on Cape York was always welcome.

“It is disappointing that so much debate over the past months, including Tony Abbott’s recent outbursts, has clearly not been informed by an accurate reading of the Wild Rivers Act and the detailed declarations that are publicly available and easily accessible.

“Any reasonable consideration of these documents reveals that development projects are in fact encouraged, providing the rivers are not unduly impacted upon. “

Activities such as mining, grazing, fishing, eco-tourism, outstation development and indigenous cultural activities can all still occur and the published declarations explain how and where such work can occur.

However, developments such as intensive agriculture, animal husbandry, in-stream dams and weirs, surface mining, and aquaculture are restricted in the most sensitive areas.

“But even these activities can receive approval if a suitable development plan, which puts appropriate environmental safeguards in place, is prepared,” Mr Robertson said.

“Surely, in such ecologically sensitive areas, this kind of case by case approach to development assessment is not too much to ask.”

The Wild Rivers Act also ensures traditional indigenous activities such as hunting and fishing can still occur and native title rights are also protected and respected.

References:

Pearson, N 2001 “Feature Review of W. de Soto’s ‘The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else’”, [Bantam, London], Cairns.

Endnotes:

i http://www.aph.gov.au/SEnate/committee/legcon_ctte/completed_inquiries/2004-07/native_title/report/d01.htm

ii http://www.cyi.org.au/WEBSITE%20uploads/Welfare%20Reform%20Attachments/From%20Hand%20Out%20to%20Hand%20Up_Welfare%20Reform%20Report.pdf

iii http://www.indig-enviro.asn.au/Indigenous%20interests%20in%20Wild%20Rivers.pdf

iv http://www.parliament.qld.gov.au/view/publications/documents/research/ResearchBriefs/2005/200515.pdf

v http://www.derm.qld.gov.au/factsheets/pdf/water/wr17.pdf

vi http://www.derm.qld.gov.au/factsheets/pdf/water/wr19.pdf

vii http://www.derm.qld.gov.au/wildrivers/pdf/wr_info_brochure09.pdf

viii https://www.wilderness.org.au/files/aurukun-wild-rivers-letter-to-qld-gov.pdf

ix http://www.cabinet.qld.gov.au/mms/StatementDisplaySingle.aspx?id=68406Appendix (A)(see attached FOI PDF)