

SENATE
LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE

REFERENCE: WILD RIVERS (ENVIRONMENTAL MANAGEMENT)
BILL 2011

QUESTIONS ON NOTICE – ATTORNEY-GENERAL’S DEPARTMENT

Question No. 1

Senator Barnett asked Katherine Jones, First Assistant Secretary, Social Inclusion Division, representing the Attorney-General’s Department, the following question upon notice, on 27 April 2011

But you are aware of those two provisions which require the Queensland government to decide whether to make a declaration and then the approval of a wild river declaration? We have had extensive discussions today with Balkanu and the Queensland government over this briefing note – CTS 02637/09. It is a public document. Are you familiar with that document?

Ms Jones – No.

Could I ask you to take that on notice? (page 31)

The answer to the Senator’s questions is as follows:

The Department understands briefing note CTS 02637/09 is a Queensland Government document. The Commonwealth Attorney-General’s Department has not been provided with a copy of this document.

Question No. 2

Senator Furner asked Katherine Jones, First Assistant Secretary, Social Inclusion Division, representing the Attorney-General’s Department, the following question upon notice, on 27 April 2011

Have there been situations where traditional owners and other Aboriginal landowners that fall under one of the types of land listed in the bill are neither traditional owners or native title holders? (page 32)

The answer to the Senator’s questions is as follows:

The Attorney-General’s Department has consulted the Queensland Department of Environment and Resource Management which advises that there are instances of ‘owners’ under the Bill who may be neither traditional owners nor native title holders.

For example, by including as a defined 'owner' the trustee of a reserve for Aboriginal purposes under the *Land Act 1994* (which is defined as 'Aboriginal land' for the purposes of the Bill), Queensland's Department of Communities, as the trustee of the reserve, must provide its written consent to demonstrate the consent of the Aboriginal people.

Further, the lessee of a lease under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (defined as 'Aboriginal land' for the purposes of the Bill), may or may not be a traditional owner, or native title holder for the land.

Question No. 3

Senator Furner asked Katherine Jones, First Assistant Secretary, Social Inclusion Division, representing the Attorney-General's Department, the following question upon notice, on 27 April 2011

In its nature of being environmental protection legislation does the wild rivers legislation differ from other environmental protection legislation in Queensland? (page 33)

The answer to the Senator's question is as follows:

The Attorney-General's Department has consulted with the Queensland Department of Environment and Resource Management about existing Queensland environmental protection legislation.

The Queensland Government has advised that the key difference between the Wild Rivers Act and other environmental protection legislation in Queensland is that the Act is the only legislation that regulates development, including mining, and resource allocations at the basin scale. The wild rivers regulatory framework seeks to bring together other Acts that deal with sustainable development and the use of natural resources (usually on individual proposals) to specifically address the impacts of development on wild rivers natural values across an entire river basin.

The Queensland Government would be best placed to undertake a comparative analysis of the operation of Queensland state environmental laws or provide authoritative advice on this issue.

The Attorney-General's Department has consulted the Department of Sustainability, Environment, Water, Population and Communities about the environmental protection mechanisms under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).

The mechanisms used by the EPBC Act and the Wild Rivers Act respectively to achieve environmental protection are fundamentally different. Part 3 of the EPBC Act prohibits, subject to civil or criminal penalty, certain actions that have, will have or are likely to have significant environmental impacts, unless the action has been approved by the Minister. Approvals may be given subject to conditions. Other Parts of the EPBC Act also contain provisions for the protection and management of certain protected areas, including Commonwealth reserves.

The Wild Rivers Act does not impose any prohibitions or penalties, but instead establishes a scheme which affects the operation of other Queensland environmental and planning Acts in relation to wild river areas. The Wild Rivers Act provides for the Minister to declare 'wild river areas'. A declaration must specify certain matters, including the values of the area, special features of the area, the activities or taking of natural resources that are regulated or prohibited in the area, matters that must be considered in deciding whether to allow the carrying out of an activity or the taking of a natural resource, the threshold limits for such activities or taking, and applicable codes for development in the area. The Act also authorises the Minister to amend the Wild Rivers Code. Decisions under other Acts that prohibit or regulate activities or taking in a declared area (including the *Sustainable Planning Act 2009*) must comply with an applicable code. Amendments have also been made to relevant environmental and planning Acts imposing particular requirements in relation to areas that are subject to a wild rivers declaration, and in particular in relation to the giving of approvals.

Any further questions on the operation of the EPBC Act should be directed to the Department of Sustainability, Environment, Water, Population and Communities.

Question No. 4

Senator Barnett asked Katherine Jones, First Assistant Secretary, Social Inclusion Division, representing the Attorney-General's Department, the following question upon notice, on 27 April 2011

If you had any doubt, I would be happy for you to take it on notice and alert the committee to any view that might be contrary to the fact that it [the Bill] would not be a legally and constitutionally valid bill. That is really what I am saying. So if you have views to the contrary, please let us know as a committee. (page 35)

The answer to the Senator's question is as follows:

Consistent with the longstanding practice of not providing legal or constitutional advice to parliamentary committees, the Attorney-General's Department is not in a position to advise the Committee about whether the Bill is constitutionally valid.