
**Advocacy For The Right To Free, Prior And Informed Consent -
Wild Rivers Legislation On Cape York Peninsula**



The Anglican Church in the Diocese of Brisbane has reviewed the operation of Queensland's Wild Rivers legislation in order to ascertain its likely impact on the future well-being of Cape York Indigenous communities.

In advocating for change, we are guided by two of the 'marks of mission' of the Anglican Church, namely:

***To seek to transform the unjust structures of society.
To strive to safeguard the integrity of creation and sustain and renew the life of
the earth.***

Implementation of the *Wild Rivers Act 2005* across Cape York has drawn strong criticism from affected indigenous communities and leadership groups. These believe that the legislation does not adequately allow for indigenous consent and contravenes prior agreements for land management on Cape York as captured in the Cape York Heads of Agreement. They also believe that the effect of the legislation is to stifle legitimate indigenous economic opportunities. They have observed that the *Act* effectively impedes sustainable economic development opportunities in proclaimed areas; an outcome that deprives affected indigenous communities of opportunities for engagement in the real economy on traditional lands.

Our review of the Wild Rivers legislation demonstrates that these objections are legitimate. We believe that the legislation is highly likely to adversely affect future indigenous well-being. We believe that the *Act* constitutes an unjustifiable erosion of hard won indigenous property rights. By not proceeding on a consent basis, current implementation of the *Act* fails to acknowledge the prior and superior moral standing of indigenous peoples in matters of land management at least.

With reference to the matter of consent we note the following extract from the United Nations' Declaration on the Rights of Indigenous Peoples. The Declaration states:

o *Governments shall consult and co-operate in good faith with indigenous peoples to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*

Expression of this principle by the United Nations encourages us in our view that properly acquired consent should be a condition for proper implementation of the *Act*. Without such consent, legitimate Indigenous interests in land are being disenfranchised.

We have consulted with environmental stakeholder groups in order to understand their views on this matter. We acknowledge that some of those whom we have consulted share our deep sense of concern at the tangible prospect of disenfranchisement of indigenous interests through the Wild Rivers declaration process. Others do not share this concern. In reaching our own conclusions, we are in or close to agreement with some, but in respectful disagreement with others.

For these reasons and others documented in our review of the effects of the legislation, we call upon the Queensland government to review its approach to land management matters as they apply to the Cape York Peninsula to achieve the following goals:

1. The Queensland Government to make no further declarations under the Wild Rivers legislation until explicit and informed consent is obtained from affected indigenous traditional owners. We contend that Indigenous land use agreements are a viable means of pursuing and capturing consent. Declarations should not proceed in cases where consent can not be properly acquired.
2. An immediate moratorium on declaration of any additional Wild River areas
3. Revoke the declarations for the Archer, Stewart, Lockhart and Wenlock Rivers given the evident absence of properly secured indigenous consent for these.

We are mindful of the legitimate goal of protecting the environmental values of Wild Rivers within the context of maintaining a capacity for sustainable economic development in remote indigenous communities.

Peace

Dean, The Very Reverend Dr Peter Catt
Chair, Anglican Social Responsibilities Committee
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Attached: Précis of development case studies reviewed in the course of conduct of research on Wild Rivers impacts.

Précis of development case studies reviewed in the course of conduct of research on Wild Rivers impacts.

As part of our research into the likely impact of implementation of the Wild Rivers legislation on affected indigenous communities on Cape York, a series of three development case studies were reviewed by expert planning advisors for the purpose of establishing the likelihood of these case studies being approved to proceed under the Wild Rivers legislative regime. The planning advice is summarised below. Full details of the planning advice are included in the Social responsibilities Committee's paper titled *Wild Rivers Policy – Likely impact on Indigenous Well-Being*.

Summary

- The purpose of the *Wild Rivers Act* is to preserve the natural values of rivers that have all or almost all of their natural values intact.
- This is to be achieved by:
 - Declaring an area to be a Wild River Area (WRA);
 - Categorising various parts of the WRA according to the values in those parts;
 - Prohibiting certain activities and regulating others according to how they are categorised and by application of provisions in:
 - The *Wild Rivers Act*;
 - A Wild Rivers Declaration (WR Declaration);
 - The Wild Rivers Code (WR Code); and
 - *Integrated Planning Act* and various other statutes such as the *Water Act* and the *Fisheries Act*.
- Where it is not possible to obtain approval to a proposed development by virtue of prohibitions, there is a mechanism to apply to the Minister for a Property Management Plan which may result in a change to the WR Declaration.
- This remedy is unlikely to provide relief for most people because of the time, cost and uncertainty associated with its implementation.
- Broadly speaking, a WR Declaration will either prohibit development, or regulate it so as to make it more difficult to achieve than prior to the declaration.
- A number of forms of development, including agriculture and animal husbandry are prohibited in High Preservation Areas (HPA).

Development case studies subjected to planning review were:

- An estuarine fish farm;
- A banana farm; and
- An eco-tourism resort.

Fish Farm: Assessment

Fish farming is prohibited in a High Preservation Area [HPA] or nominated waterways if it interferes with water flow. This could make the establishment and conduct of in-stream aquaculture very difficult to achieve in a WR declared area. (Note that pond aquaculture is also prohibited in HPAs).

Banana Farm: Assessment

Banana farming for commercial purposes falls under the definition of agricultural activities (Planting, gathering or harvesting a ...food...crop."). Agriculture (and agribusiness) is prohibited in a HPA. In Preservation areas, other restrictions on taking or interfering with water and clearing vegetation could pose significant challenges to the establishment of new agriculture businesses.

Ecotourism: Assessment

The provisions of the WRA and associated instruments are potentially less onerous in relation to ecotourism than other commercial ventures.