Hon Stephen Robertson MP
Member for Stretton

Queensland Government

Minister for Natural Resources,
Mines and Energy and
Minister for Trade

Ref CTS 06227/10

Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Dennett

Thank you for affording me the opportunity to make a submission in relation to the Wild Rivers (Environmental Management) Bill 2010 [No.2] (the Bill) on behalf of the State of Queensland.

The Queensland Government does not support the Bill and believes that it imposes on the Queensland Government's authority to legislate on natural resource and land use matters.

To assist the Senate Committee in its deliberations, the Queensland Government is providing an outline of:

1. The Queensland *Wild Rivers Act 2005*.
2. The Queensland Government's views as to the relationship between the *Wild Rivers Act 2005* and the *Native Title Act 1993 (Cth)*.
3. The shortcomings of the Bill.
4. Responses to questions asked during the public hearings, Questions on Notice from the Cairns public hearing and separate questions provided by Senators.
5. General information to assist the Senate Committee.

1. The Queensland *Wild Rivers Act*

The *Wild Rivers Act 2005* (WRA) received cross-party support. It sets out a legislative framework for the preservation of rivers that have all, or almost all, of their natural values intact. It does this through an extensive statute- based consultation program. As part of the consultation program, a declaration proposal is released for public comment and there is a submission period within which any entity may make a submission on the declaration proposal. Any submissions received, as well as the outcomes of consultation, are considered in making the decision, where appropriate, to declare a wild river area and obtain the requisite approval of the declaration by Governor-in-Council.

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The Wild Rivers legislative framework does not affect existing rights, including a person's right to the exercise or enjoyment of native title. These are expressly protected under provisions of the Act. In relation to native title, section 44 provides: "a wild rivers declaration or a wild rivers code, in applying for the purposes of any of those other Acts, cannot have the direct or indirect effect under the other Act of limiting a person's right to the exercise or enjoyment of native title."

The Cape York Peninsula Heritage Act 2007 was introduced to assist Indigenous economic development on Cape York Peninsula. This Act was developed in consultation with Mr Noel Pearson and amended the Wild Rivers Act to explicitly protect native title rights in a wild river area. This Act also provides for reserves of water to be made available to Indigenous people to assist in social and economic development.

Contrary to submissions made by Advance Cairns; P&E Law; Lockhart River Aboriginal Shire Council; Cape York Institute; Kokoberin Tribal Aboriginal Corporation; ACIL Tasman; Balkanu Cape York Development Corporation; Harold Ludwick; Cape York Land Council; and Property Rights Australia, development can and does occur in wild river areas.

Since the first wild river declarations were approved under the WRA, there have been approximately 173 development applications made (this includes applications for environmental authorities, riverine protection permits, vegetation clearing and mining tenements). Of those which have been finalised, there have been no refusals. It is worth noting that a number of submissions concur with the Queensland Government's position that development is not constrained, this includes: Chuulangun Aboriginal Corporation; Australian Conservation Foundation; Simon Kennedy; and Giringun Aboriginal Corporation.

Many new developments can and do proceed in wild river areas. Some of the developments which are able to proceed include offstream dams, native vegetation clearing, road development and maintenance, access to quarry material, essential services such as water and sewerage treatment, grazing and farming, tourism operations, development of outstations and homesteads, and yes, even mining activities.

A number of submissions have queried the validity of the WRA. This includes submissions from Cape York Institute, Balkanu Cape York Development Corporation, and Cape York Land Council. The Queensland Government maintains that the WRA is valid. Only a Court has the authority to determine otherwise.

2. The Commonwealth Native Title Act 1993 and native title rights

A number of submissions have raised the issue of potential implication of the Bill, or the Wild Rivers Act on native title. The following submissions have implied that the WRA impacts negatively on the enjoyment of native title rights; Gilbert & Tobin Centre for Public Law; Lockhart River Aboriginal Shire Council; Cape York Institute; Mr Greg McIntyre; Professor Jon Altman; Kokoberrin Tribal Aboriginal Corporation; Balkanu Cape York Development Corporation; Cape York Land Council. However, a number of submissions had different views that the WRA does not impact on Native Title Rights; this includes Chuulungan Aboriginal Corporation, and the Wilderness Society. The State believes that the WRA does not impact on native title rights, and offers the following as an explanation.

The Commonwealth *Native Title Act 1993 (Cth)* (NTA) provides the framework and processes to recognise and protect native title. The NTA:

- provides that native title cannot be extinguished contrary to the NTA (section 11);
- sets out ways in which future dealings affecting native title (future acts) may validly proceed (section 24AA); and
- provides for the effect on native title of certain future acts, either by application of the non-extinguishment principle (often referred to as suppression of native title) or extinguishment of native title.

The Queensland Government is of the view that the wild rivers legislative framework is consistent with the NTA.

In relation to the legislative act of making the WRA, the Queensland Government's view is that the making of the WRA in 2005 was valid and was not an act that affected native title. To have affected native title, the WRA would need itself, simply by being made, to have extinguished or been otherwise inconsistent with the existence, enjoyment or exercise of native title. The WRA did not have this effect. Instead the WRA establishes a framework under which wild river areas are able to be declared and identifies how development activities are regulated within management areas of a declared wild river. Accordingly native title is not affected by the WRA. However, even assuming this was not the case, the making of the WRA is still valid under the future act provisions of the NTA to the extent it affects native title (see sections 24HA and section 24MD of the NTA).

In relation to the administrative act of making wild river declarations under the WRA, the Queensland Government's view is that having regard to the 'native title protection' provision in section 44 of the Act, a wild river declaration does not and cannot affect the exercise or enjoyment of existing native title rights and interests and therefore is not a future act. Even if a declaration could be considered to be a future act (which the Queensland Government asserts is not the case) it would be valid under the future act provisions of the NTA (section 24MD).

Further, as the Senate Committee would be aware, section 109 of the Commonwealth Constitution states: "When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."

This means that even if the WRA had not provided an express 'native title protection' provision, such as section 44, and a Court held that the effect of a declaration made under a provision of the WRA did invalidly impinge on native title rights, contrary to the NTA (which the Queensland Government asserts it does not on the basis outlined above), section 109 would render such provisions or laws inoperative to the extent of any inconsistency.

3. The shortcomings of the Bill

The intent of the Bill purports to be for the purpose of "protecting the rights of traditional owners of native title land within wild river areas to own, use, develop and control that land". As outlined above, the NTA already protects the native title rights and interests of native title holders. Should the Commonwealth Government seek to extend the rights afforded under the NTA, I suggest that the more appropriate mechanism for this would be by an amendment to the NTA itself. This is consistent

with submissions provided by Professor Geoff Mosley, Mr Greg McIntyre, Australian Conservation Foundation; Simon Kennedy, Carpentaria Land Council Aboriginal Corporation, and The Wilderness Society.

Drafting issues

Set out below is a brief outline of matters associated with the Bill that the Queensland Government would like to see clarified. This is not a comprehensive list, and focuses on key issues only.

There remains an issue concerning how the Bill interacts with the NTA. Generally, the language of the Bill does not reflect the defined terms used in the NTA and this raises potential concerns about the uncertainty that could arise should the Bill be assented to. For example, the Bill uses the terms 'native title', 'native title land', 'Aboriginal traditional owner' and 'traditional owner'. An Aboriginal traditional owner or traditional owner (both of which are not defined) may or may not be a native title holder, as their native title may have been extinguished, expired or surrendered. However, under the Bill, Aboriginal traditional owners are linked to the 'native title land', which is defined as 'land in which native title exists'. This leads to the question why the term "native title holder" was not used instead?

The Bill uses the phrase "protect the *rights* of traditional owners of native title land". It is unclear what is encompassed by the term "rights". This is not defined in the Bill. It would seem to mean more than what is currently understood as native title rights, or even traditional rights. For example, the Bill seems to capture a native title holder, who is also a resident within a wild river area who wishes to undertake a purely (non-traditional) commercial enterprise on their land, (which also is their native title land). If so, this is not what the Queensland Government understands to be a native title right, within the meaning of the NTA.

It is arguable that the Bill seeks to extend native title rights beyond that currently contemplated under the NTA, so as to include the ability to 'own, use, develop and control that land'. This is properly a matter for the Commonwealth Government. In any case, it seems arbitrary to afford an extension of these rights to those Aboriginal traditional owners within wild river areas of Queensland, rather than to all Indigenous Australians generally.

The Bill purports to provide a power of veto to 'Aboriginal traditional owners' as part of any wild river declaration process. It should be noted that there are non-Indigenous people located on the Cape York Peninsula and other parts of the State of Queensland where a wild river has been declared. There may be issues of fairness or discrimination to be considered if only one category of people is given such a power of veto.

Another issue is what the term 'agreement' means and how this is to be given effect. Currently, the NTA provides clarity and certainty in its agreement making provisions (for example such as Indigenous land use agreements) in relation to who must be a party, authorisation of the agreement and its subsequent registration and effect on native title holders. The Bill does not provide any clarity or certainty in this regard.

Section 6 of the Bill requires, where an existing wild river declaration is in place, that new wild river declarations be made irrespective of whether there is existing support from "Aboriginal traditional owners" for those existing wild river declarations. This

requirement also ignores the extensive consultation that was undertaken in relation to each wild river area.

Section 7 of the Bill appears to allow for inclusion of a process and any change to that process for seeking and negotiating agreement, through a regulation. This does not allow for proper legislative scrutiny and Parliamentary consideration of the ramifications of any such process and places the Queensland Government ,in an untenable position in that while undergoing a process for obtaining agreement, the terms of obtaining that agreement may be changed arbitrarily.

4. Response to questions asked during public hearings, Questions on Notice from the Cairns public hearing and separate questions provided by Senators

Numerous questions have been raised, including formal questions on notice received from Senator Barnett on 16 April 2010 and questions raised by a number of Senators during the hearing in Cairns on 13 April 2010. Responses to these questions and other more general responses are set out separately below.

Question on notice from Senator Siewert and Senator Barnett - Please provide details on the consultation process and how that consultation process was carried out in reference to the Lockhart, Stewart and Archer wild river areas

In relation to the Archer, Lockhart and Stewart declarations, three notices were published (a combined notice of intent to declare, effect of moratorium and declaration proposal notice) for the Archer Lockhart and Stewart Basins respectively. These were published in the following newspapers:

- Western Cape Bulletin on 24 July 2008
- Cooktown Local News on 23 July 2008
- Courier Mail on 24 July 2008
- Cairns Post on 24 July 2008
- North Queensland Register on 24 July 2008

The declaration proposals for each basin were made publicly available at the same time the above notices were published, for people to comment on and make submissions within the submission period.

The moratorium period (as a result of the public notification), took effect 24 July 2008 and the Cape York Peninsula moratorium was amended under the Water Act 2000 to ensure consistency. The formal submission period was from 23 July 2008 until 21 November 2008, well beyond the statutory requirement.

The consultation program involved a range of approaches, including:

- mail out of information kits with fact sheets on wild rivers to all peak bodies and stakeholder groups in June 2008
- mail out of letters containing the declaration proposal and overview reports to all landholders within the basin, as well as to local governments, land trusts, mining tenement holders, industry representatives, community groups and peak body representatives
- on-ground face-to-face consultation meetings
- phone calls seeking feedback from key stakeholders who were unable to physically attend consultation meetings
- attendance at local government and community meetings
- attendance at meetings aligned with other state government agencies

- development of material for the Department of Environment and Resource Management website, which included fact sheets, electronic versions of the declaration proposal and overview report, submission forms and electronic submission lodgement through the website
- public airtime on Imparja TV of Wild Rivers DVD and Murri Minutes (produced by Bush TV), covering general information about wild rivers
- water report article on wild rivers published in the Rural Weekly, Torres News, Western Cape Bulletin and Cooktown Local News
- informal meetings
- responding to ongoing phone enquiries.

On-ground face-to-face consultation meetings with individuals, and larger group meetings, were held with a range of stakeholders. These included local governments, graziers, mining companies, tourism operators, conservation and environmental groups, land trusts representatives, traditional owners, commercial and business operators, development and representative bodies, community organisations, recreational fishers and tourists.

Communities visited throughout Cape York Peninsula during the consultation phase of the three declaration proposals included Aurukun, Lockhart River, Coen, Cooktown, Weipa, Napranum, Mapoon, Port Stewart and Portland Roads. In many cases consultation meetings required repeat visits to ensure the information disseminated was clear, and stakeholders had an opportunity to seek further clarification on any issues.

The Government recognises that the Indigenous population has continued an enduring relationship with the country of Cape York Peninsula and, for this reason, consultation is focussed in getting on-country talking to Indigenous communities.

Throughout the declaration proposal process, over 100 meetings were held with stakeholders (refer to Attachment A for further information on these meetings).

Question from Senator Siewert taken on notice during the hearing -Do you have a total on what percentage is a high preservation area and what percentage is a preservation area, in those [three] areas that have already been declared?

Of the area identified as the Cape York Peninsula Region in the *Cape York Peninsula Heritage Act 2007* - 2.1% is covered by High Preservation Areas under existing wild river declarations.

For each declared wild river area referred to, the below table provides detailed information on the percentage of each declared area which comprises the High Preservation Area.

Declared Wild River Area	% of area which forms the High Preservation Area	% of area which forms the Preservation Area
Archer	16	84
Lockhart	19.1	80.9
Stewart	17.2	82.8

Question from Senator McLucas taken on notice during the hearing - I would like to ask the Queensland Government to comment on Schedule 1 of the Sustainable Planning Act 2009 in reference to native vegetation clearing.

At the Senate Inquiry Mr Yarrow for the Cape York Land Council made the following statement:

You might recall I did say a low impact tourism venture that involved any measure of clearing. You will not find any entry in the Queensland wild rivers regime or planning law that says 'Indigenous low impact tourism'. It is simply not a category that it talks of. Instead it talks of vegetation clearing or not. Remember I mentioned before any vegetation clearing in the high preservation area is strictly prohibited. This is my point about protecting the middle and low end but not paying attention to protecting the high end, or at least some aspects of the high end. The wild river system is so rigid that a vegetation clearing application, which is part of the development application under the planning law of Queensland, can simply not be made in the high preservation area. I did bring with me schedule 1 of the Sustainable Planning Act which bears this out, and I am happy to table that if that would help. (emphasis added)

A response to this issue is set out below and is appropriate as it clarifies for the Committee, what the law actually states. Schedule 1 of the *Sustainable Planning Act 2009* identifies prohibited development. Part 3 of Schedule 1 identifies the following as prohibited development:

Assessable development prescribed under section 232(1) that—
(a) is operational work that is the clearing of native vegetation; and
(b) is not for a relevant purpose under the Vegetation Management Act, section 22A.

Section 22A(2) of the Vegetation Management Act identifies the relevant purposes for which applications to clear native vegetation may be made.

Under the Vegetation Management Act, the following are relevant purposes for which an application to clear native vegetation may be made for a high preservation area:

- necessary to control non-native plants or declared pests; or
- to ensure public safety; or
- for establishing a necessary fence, firebreak, road or vehicular track, or for constructing necessary built infrastructure, (each relevant infrastructure) and the clearing for the relevant infrastructure can not reasonably be avoided or minimised; or
- a natural and ordinary consequence of other assessable development for which a development approval was given under the repealed Integrated Planning Act 1997, or a development application was made under that Act, before 16 May 2003; or
- for clearing of encroachment; or
- for clearing regrowth vegetation on freehold land, indigenous land or leases issued under the Land Act 1994 for agriculture or grazing purposes, in an area shown as a registered area of agriculture on a registered area of agriculture map in a wild river high preservation area.

Mr Yarrow mentions low impact tourism, without any details of what this means. Assuming that, such a development were to involve the construction of buildings

(e.g. accommodation buildings), then such a development would be expected to be able to proceed as it was usually fall into the following category under section 22 -

> for establishing a necessary fence, firebreak, road or vehicular track, or for constructing necessary built infrastructure, (each relevant infrastructure) and the clearing for the relevant infrastructure can not reasonably be avoided or minimised.

Again, this would depend on the particular development being proposed but it is clear from the above that built infrastructure continues to be a relevant purpose for clearing in a high preservation area. While any application for such clearing would need to meet the requirements of Part 12 of the Wild Rivers Code, it is not correct to state that 'a vegetation clearing application... can simply not be made in the high preservation area'.

As well as this there are a number of exemptions under the Vegetation Management Act 1999, in particular for single residences for example. There are no wild river requirements for clearing in a preservation area.

Question from Senator Siewert taken on notice during the hearing - Of the development applications received, how many were in the High Preservation Area and how many in the Preservation Area?

The Queensland Government refers you to the material tabled and provided to the Senate Committee at the hearing held in Cairns on 13 April 2010. A copy of this is provided in Attachment B. This information is collated across various entities (as the normal development application and approval processes apply). The Queensland Government can advise that all vegetation management applications listed in Attachment B related to land located within High Preservation Areas.

To reiterate, the Wild Rivers Act does not affect existing rights and interests. To assist the Senate Committee in understanding how the legislative framework operates in relation to new development applications, an excerpt from the Wenlock Overview Report is attached (Attachment C). An overview report accompanies the release of each and every declaration proposal document and explains in general terms, how new applications are proposed to be dealt with. Should Committee members have any specific queries in relation to certain types of development, the Queensland Government is happy to provide additional information.

Question from Senator McDonald taken on notice during the hearing - Of the 3000 or so submissions received, how many were from residents of Cape York (locals) and how many from outsiders?

In relation to the Archer, Lockhart and Stewart wild river areas, approximately 15 submissions were made on the declaration proposals by organisations and individuals within the Cape. These 15 submissions included 79 signatures from Traditional Owners.

Numerous other submissions were received from other stakeholders in relation to the above wild river areas.

The Wild Rivers Act does not prevent submissions being made from people that live outside a wild river area. Cape York is an area of interest to people across the Cape

York region, Queensland and Australia – the interest of the Senate in this matter is a good example of the far-reaching interest people have over this unique part of Queensland.

In considering the submissions, the Minister isn't influenced by the number of submission on matters, rather the relevance and weight of the issues.

Senator McDonald raised a general question during the hearing - Why is it that an aboriginal elder, Mr Andy, did not know about a declaration?

Please refer to the question on notice from Senator Siewert and Senator Barnett on page 5, which details the consultation program. The Queensland Government cannot speak for Mr Andy.

In their Senate Inquiry submission, Girrungun Aboriginal Corporation make it clear that they were "aware of the Queensland Government's intention to declare Hinchinbrook a Wild River at the time" of the declaration proposal.

What the Queensland Government can comment on is the extensive efforts of the Department of Environment and Resource Management to inform the community of the declaration proposals, including by providing an outline of the consultation process provided for under the Wild Rivers Act and the consultation activities undertaken by the department as part of the Hinchinbrook declaration proposal processes.

Under the Wild Rivers Act, the following must occur:

1. A public notice of the Minister's intent to declare a part of the State a wild river area. This notice must include a moratorium period
2. A declaration proposal notice must be published and the declaration proposal released for public comment and submissions (this is able to be published with the notice of intent to declare)
3. Community consultation is carried out
4. The results of community consultation and properly made submissions on the declaration proposal are considered (as well as any relevant water resource plan or resource operations plan in place over all or part of the area)
5. A decision is made to declare that part of the State a wild river area or not to declare.

A notice of intent to declare the Hinchinbrook wild river area and declaration proposal notice were published on 8 December 2005 in the Courier Mail and Ingham Herbert River Express. The effect of the moratorium commenced on 12 December 2005 as stated in the notice.

A submission period commencing 8 December 2005 concluded on 10 February 2006. The submission period was greater than the prescribed statutory period of 20 business days. Any entity was able to make a submission on the declaration proposal during the submission period and contact details were provided to enable any person to make queries of the department concerning the declaration proposal.

Questions were raised by Senator Trood and Senator Boswell during the hearing on claims raised that the original policy discussions referred to rivers only, but later in the piece the idea of basins were introduced.

In 2004 the then Premier, the Honourable Peter Beattie, made an election commitment to declare wild rivers (Attachment D). The map enclosed shows quite clearly that the policy would apply to basins. As stated in the election commitment "Development in the catchments of our wild rivers will need to be assessed on the basis of its impact on the rivers, and managed so that any effect is minimised in order to preserve their natural values."

The Wild Rivers Act was passed by the Parliament of Queensland in 2005 and gives effect to the election commitment. The Act provides that the Minister may declare part of a State to be a wild river area (s7) and that more than one river in the proposed wild river area can be identified as a proposed wild river (s8).

Question from Senator Siewert taken on notice during the hearing - If the Wild River declaration requires the HPA to be treated as if a high conservation value area had been declared - presumably such declarations occur elsewhere in the State, outside of wild river areas? Where and how are these declarations made?

Under the *Vegetation Management Act 1999* (VMA), areas can be declared as areas of high nature conservation value by;

- Governor in Council by gazette notice;
- the Minister administering the VMA (for interim declarations) by gazette notice; or
- the Chief Executive administering the VMA by agreement with a land owner (also known as voluntary declarations).

Declarations of areas of high nature conservation value by Governor in Council under the VMA can be requested by anyone and require consultation with

- a Ministerial advisory committee for vegetation management (if in existence);
- local governments and each landholder affected by the proposed declaration; and
- the public.

The consultation occurs under the Wild Rivers process. Voluntary declarations can only be made by agreement with the land owner.

Outside of wild river high preservation areas there have been:

- no declarations by Governor in Council;
- no interim declarations by the Minister administering the VMA; and
- 8 voluntary declarations, mostly to protect vegetation offset as part of development approvals.

The VMA provides that a wild river high preservation area is taken to be a declared area of high nature conservation value. Consultation for VMA matters for wild river high preservation areas that become declared areas of high nature conservation value occurs under the Wild Rivers Act.

During the hearing, clarification was sought on the role of Balkanu in consultation for the Archer, Lockhart and Stewart Basins

The department engaged Balkanu Cape York Development Corporation to assist and facilitate consultation with Traditional owners and Indigenous communities

within the three proposed wild river areas between June 2008 and November 2008. The fee for the contract was $68,500 (GST Inclusive).

The Terms of Reference for the contract between the state and Balkanu Cape York Development Corporation stipulated the following services requirements from Balkanu:

1. To develop a clear project plan to clarify tasks, milestones, reporting arrangements and objectives required for a Consultancy to facilitate Indigenous participation in the Wild River Consultation program process;
2. Identify those Indigenous groups that have connections with the lands covered by the three basin areas;
3. Identification of resources, mapping and information required to assist Indigenous peoples and their representatives to make informed submission;
4. Organise and facilitate meetings between key representatives of those identified Indigenous groups and departmental staff. The purpose of these meetings was for the department to disseminate information on the Wild Rivers initiative, that is inform traditional owners and the Indigenous community of the wild river proposal, and identify the area to be covered by the wild river area. The professional contract service was to identify the traditional owner groups of the area, and identify any concerns regarding the proposal. There was to be at least one meeting with the representatives of traditional owners in each of the following areas:
    - Archer River Basin proposed Wild River Area;
    - Stewart River Basin proposed Wild River Area;
    - Lockhart River Basin proposed Wild River Area.

Throughout the hearing, clarification was sought on how much funding the Commonwealth provides for land tenure resolution and how much funding the State provides

The Queensland Government has committed $2,558,000 over two years to Balkanu Cape York Development Corporation to support the facilitation of tenure resolution in Cape York Peninsula including both the negotiation of new tenure arrangements over existing State land and the conversion of the existing national park estate to national park (Cape York Peninsula Aboriginal land). The Land Tenure Resolution process run by the Queensland Government provides for the creation of areas of inalienable Aboriginal freehold land under the ownership of traditional owner land holding bodies and enables the establishment of joint management arrangements for the existing and new National Parks across the Cape York Peninsula Region.

There are currently 2 contracts in place between DERM and Balkanu Cape York Development Corporation. Both Contracts are from 1 April 2009 to 31 March 2011 (2-year period). The State Land Dealing Contract is for $1,302,000 over two years. An additional amount of up to $850,000 is also provided over two years to support disbursement payments which includes costs associated with payments to anthropologists, meeting costs and travel.

The National Park Contract is for $1,256,650 over the two years.

The Commonwealth does not provide any funding towards land tenure resolution as outlined above. Rather, the Commonwealth funds the Indigenous Land Corporation (ILC) which has undertaken the purchase of a number (approximately eight) pastoral leases on the Peninsula. This does not alter the tenure of those lands.

The Queensland Government has also invested $24 million in land acquisition in Cape York Peninsula since 2003 acquiring 637,000 hectares of land. Since 2005, the tenure resolution process has resulted in an additional 533,000 hectares of national park and 580,000 hectares of inalienable Aboriginal freehold land. The Commonwealth has not invested in land acquisition in the Peninsula in that period.

Throughout the hearing, clarification was sought on what can be done in a high preservation area and a preservation area? How is this different from what can normally occur?

The State of Queensland regulates natural resources across Queensland for the benefit of all Queenslanders. In a wild river area, given these are internationally renowned, it is appropriate that management is aimed specifically at protecting these areas. However, the Government understands that economic development much continue to be provided for in these areas.

The Wild Rivers Act does not lock out all development, rather it provides for varying levels of regulation of development activities depending on the potential impacts to natural values of the declared wild river.

Within the High Preservation Area, stock grazing, pasture improvement, taking water for stock and domestic purposes and weed and pest management is not affected. Though there are some prohibitions in the High Preservation Area (such as surface mining, in stream dams and weirs, aquaculture, feedlots and indiscriminate clearing of vegetation), development activities around low impact agriculture, tourism facilities, essential services (such as roads, town water and sewage treatment) and outstations can continue.

In the Preservation Area (the remaining wild river area not included in the High Preservation Area), the only prohibitions are stream realignment and in stream quarry extraction (NB there is an exemption for specified works including for roads and residential complexes).

Approvals to carry out new activities in the wild river areas are still subject to existing legislative requirements. As is the case throughout the State, it is the responsibility of the person carrying out an activity to ensure compliance with all existing local, state and federal legislative processes.

Formal responses to Questions on Notice provided to the Department by Senator Barnett

On 16 April 2010, the Minister for Natural Resources, Mines and Energy and Minister for Trade received the following questions from Senator Barnett:

> ***Q1 – Please provide a copy of the instrument signed by the relevant Minister by which he exercised his powers under s7 and s15 of the Wild Rivers Act in making the wild river declarations.***
> ***Q2 – Were all the public submission and the results of public consultation provided to Minister Wallace whilst he was Minister for Natural Resources and Water?***
> ***Q3 – On what date was this material provided to Minister Wallace?***
> ***Q4 – Did Minister Wallace consider this material in preparing the wild rivers declarations?***

Q5 – Did you or your department provide to Minister Robertson the materials that he needed to have in front of him, including all of the written submissions and results of public consultation, in order to exercise his duties under the WRA in making the three wild river area declarations?
Q6 – If so, on what date was this material provided to Minister Robertson?
Q7 – Did Minister Robertson make any changes to the declarations as a result of his considering this material? If so what were these changes?
Q8 – I refer to the email from Scott Buchanan to Debbie Best on 4.59 of the 30 March 2009 which states in part 'What is the current state of play in terms of approval, do we need to get an approval by the Minister, as it appears the previous Minister did not sign CTS 01188/09, to approve the declarations proceeding to GiC. If this is the case, I propose that I will renew this CTS for the Minister's information and approval. Is that ok?' Was there a briefing note provided to Minister Robertson for his signature which replaced CTS 01188/09 and included the public submissions and the results of consultation on the wild river declaration proposals. If so, when was this briefing note provided to Minister Robertson and when was it signed? Please provide a copy.

In relation to questions 1 to 8, it is noted that these questions are outside the scope of the Senate Inquiry. However, the Queensland Government proposes to outline the decision-making process to declare the Archer, Lockhart and Stewart wild river areas, to assist the Senate Committee. It should also be noted that these responses address issues raised in the Cape York Institute's submission pages 1 to 3.

The *Wild Rivers Act 2005* provides authority for the "Minister" to consider submissions and make a final decision for Governor in Council approval. That authority resides with the Ministerial position, and not with the individual.

The fundamental requirements of the Wild Rivers Act in relation to consultation are:
1. A public notice of the Minister's intent to declare a part of the State a wild river area. This notice must include a moratorium period
2. A declaration proposal notice must be published and the declaration proposal released for public comment and submissions (this is able to be published with the notice of intent to declare)
3. General community consultation is carried out
4. The results of community consultation and properly made submissions on the declaration proposal are considered (as well as any relevant water resource plan or resource operations plan in place over all or part of the area)

The Minister then makes a decision on whether to seek Governor in Council approval to declare that part of the State a wild river area or otherwise. This decision is made after consideration of the submissions and results of consultation and that Governor in Council approves the declaration under section 16 of the Act.

The sequence of events in the decision-making process for the Lockhart, Archer and Stewart wild river areas can be summarised as follows.

In relation to section 7 of the Wild Rivers Act, this is a general overarching provision that gives the Minister a head of power to declare a part of the State to be a wild river area. If the Minister intends to declare a part of the State a wild river area, then

this decision is demonstrated through the relevant public notifications made under section 8 of the Act. The previous Minister responsible for the Wild Rivers Act, the Honourable Craig Wallace MP, commenced this process when he published Notices of Intent to declare the three basins as wild river areas on 23 July 2008. It is not an uncommon occurrence for more than one Minister to be involved in a statutory process which takes a considerable amount of time, given governments and Ministers will change from time to time.

All relevant material was provided to the Honourable Craig Wallace MP on 18 February 2009. These materials were again submitted to Honourable Stephen Robertson MP on being sworn into office.

All this material was considered in preparing the wild river declarations.

The Honourable Stephen Robertson MP was sworn in as Minister for Natural Resources, Mines and Energy and Minister for Trade on 26 March 2009. Upon taking up office, the Minister was in receipt of the submissions made on the Archer, Stewart and Lockhart declaration proposals, the results of community consultation on the three declaration proposals as well as the proposed final declarations. As there is no water resource plan or resource operations plan covering part or all of the areas, there was no need to consider those matters listed in section 13(2) of the Act.

These items were provided to the Minister by departmental officers on taking up office and the Minister began actively considering these matters, and was briefed by departmental officers, upon taking up office.

On 1 April 2009, the Minister signed the final decision to seek approval by Governor in Council to declare the Archer, Stewart and Lockhart Basins as wild river areas (Attachment E). This decision was made pursuant to section 15 of the WRA.

Prior to making this decision, he considered the results of community consultation on the declarations proposal and all properly made submissions on the declaration proposal. The final declarations submitted to Governor in Council for approval had changes from the declaration proposals that were released for public consultation. Both the declaration proposals and the final declarations are publicly available documents.

The declarations were explicitly considered and approved by Governor in Council on 2 April 2009 (Attachment F) and were gazetted on 3 April 2009.
As can be seen from the above, Governor in Council approval of the wild river declarations on 2 April 2009 followed consideration by the Minister of all matters required under the Wild Rivers Act.

5. General information to assist the Senate Committee

While I understand that the scope of the Senate Committee's inquiry is only in relation to the implications of the proposed Bill and does not extend to an investigation into the validity or perceived impacts of Queensland's wild rivers legislation, given this has arisen in the majority of submissions made to the Senate Committee of which I am aware, I feel it is incumbent on me, as a representative of the Queensland Government, to provide some clarification on key issues to assist the Senate Committee.

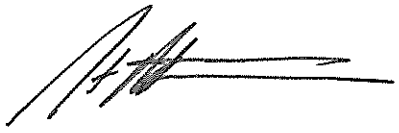
Departmental representatives have met with Mr Noel Pearson on several occasions to discuss the wild rivers legislative framework and *Cape York Peninsula Heritage Act 2007* (CYPHA). These discussions led to amendments to the CYPHA.

The Queensland Government has also put in place a Wild River Rangers program which has had considerable success. The Wild River Rangers program is part of the *Looking After Country Together* framework, a whole-of-government policy aimed at improving Aboriginal and Torres Strait Islander involvement in managing land and sea country. This program provides an important employment opportunity for Indigenous people and includes the provision of training to allow those rangers to obtain useful skills and qualifications while at the same time, providing positive outcomes for the management of land. The Rangers, being locals, have close links with traditional owners of the country they care for and often pass on their knowledge and skills to community members. This program recognises the traditional cultural connection of Indigenous people to their country.

The Queensland Government has, and continues to carry out as part of the wild river declaration proposal process, a comprehensive consultation program with all key stakeholders, particularly engaging with Traditional Owners and the Indigenous community.

Should you have any further enquiries, please do not hesitate to contact Mr Tim Watts, Policy Advisor of my office on telephone 07 3225 1797.

Yours sincerely



STEPHEN ROBERTSON MP

Accompanying supporting documents

Attachment A—Information on stakeholder meetings
Attachment B—Information about development applications as tabled at the Senate Committee hearing in Cairns (dated 13 April 2010)
Attachment C—Wenlock Overview Report
Attachment D—Election commitment to declare wild rivers
Attachment E—Minister's decision to proceed to Governor in Council (dated 1 April 2009)
Attachment F—Governor in Council approval of the declarations (dated 2 April 2009)