CARPENTARIA LAND COUNCIL ABORIGINAL CORPORATION

ABN 99 121 997 933 - ICN 268

Carpentaria Land Council Aboriginal Corporation

SUBMISSION TO STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS (LEGISLATIVE COMMITTEE) INQUIRY INTO THE *WILD RIVERS (ENVIRONMENTAL MANAGEMENT) BILL* 2011

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Carpentaria Land Council Aboriginal Corporation
Unit 2 14A Aplin Street
PO Box 6662
Cairns QLD 4870
Ph: (07) 4041 3833
Fax: (07) 4041 3533

INTRODUCTION

1. Carpentaria Land Council Aboriginal Corporation ("CLCAC") is the organisation carrying out the functions of a representative Aboriginal/Torres Strait Islander body pursuant to s203FE of the *Native Title Act* 1993 (Cth) ("the NTA") in relation to land and waters in the southern Gulf of Carpentaria.

2. CLCAC‟s representative body area includes land and waters the subject of Federal Court determinations recognising the existence of native title.[1] It also includes land and waters which are the subject of native title claims[2] and areas where native title is asserted notwithstanding that formal proceedings are yet to be commenced. CLCAC's area includes determinations or claims adjacent to or in the vicinity of town areas and Aboriginal communities including Doomadgee, Burketown, Normanton and Gununa (Mornington Island).

3. CLCAC assists native title claim groups and prescribed bodies corporate with registered native title claims and determinations covering the *Gregory Wild River Declaration 2007* and *Settlement Wild River Declaration 2007* and assists traditional owners who assert rights and interests over the *Morning Inlet Wild River Declaration* 2007 and the *Staaten River Wild River Declaration 2007*.

4. CLCAC is pleased to provide the following submission to the House of Representatives inquiry into Standing Committee on Legal and Constitutional Affairs (Legislation Committee) inquiry into the *Wild Rivers (Environmental Management) Bill* 2011.

WILD RIVERS DECLARATIONS & INDIGNEOUS RANGERS IN THE SOUTHERN GULF OF CARPENTARIA

5. CLCAC refers to and replies upon its "Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the *Wild Rivers (Environmental Management) Bill 2010*" dated 31 March 2010 annexed hereto and marked "Attachment A".

6. Attachment A includes details of those Wild Rivers declarations that were made in the southern Gulf of Carpentaria in 2007 and outlines the support received from Traditional Owners in respect to each of those declarations.

7. CLCAC, traditional owners and native title holders in the southern Gulf of Carpentaria continue to support the *Gregory Wild River Declaration, Morning Inlet Wild River Declaration*, *Settlement Wild River Declaration* and *Staaten River Wild River Declaration.*

8. Attachment A details the importance and success of CLCAC‟s Wild River Ranger Program. The Committee is specifically referred to paragraphs 13-21 of Attachment A.

TERMS OF REFERENCE OF THIS INQUIRY

1 See *Lardil Peoples v State of Queensland [2004*] FCA 298 („the Wellesley Sea Claim‟); *Lardil, Yangkaal, Gangalidda & Kaiadilt Peoples v State of Queensland [2008]* FCA 1855; Gangalidda & Garawa People v State of Queensland [2010] FCA 646.
2 Ada Walden & Ors on their own behalf and on behalf of the Waanyi People QUD 6022 of 1999; Murray Walden Jnr & Ors on behalf of the Gangalidda & Garawa People QUD 84 of 2004 and Walden Jnr & Ors on behalf of the Gangalidda & Garawa People QUD 66 of 2005.

Indigenous economic development

9. CLCAC is not aware of a single proposed development in its representative area that has been impeded in any way by the operation of the *Wild Rivers Act*.

10. The Committee is referred to the general comments made at paragraphs 29 and 30 of Attachment A.

11. CLCAC is of the view that the ideal of balancing land development and environmental sustainability is a complicated issue that requires consideration well beyond the context of this Bill. CLCAC also considers that proponents of the Bill have presented a simplistic scenario of environment at the expense of development that fails to take into account a range of issues that must be considered if we are to raise barriers to economic development in Indigenous communities.

12. The Committee is urged to make recommendations to ensure that adequate funding is provided to traditional owner organisations to investigate barriers to economic development and to develop sustainable economic development. CLCAC suggests that the role and capacity of native title prescribed bodies to participate in economic development also be investigated and funded.

The *Wild Rivers (Environmental Management) Bill 2010*

13. The intent of the Bill is at the same time both confusing and slippery and, with respect, has been poorly drafted.

14. The most concerning aspect of the Bill is the operation of section 5, together with the definitions of “Aboriginal land” and “owner“ set out in section 3.

15. CLCAC is concerned that, if the Bill is passed, the operation of Section 5 may result in litigation between traditional owners/native title holders/native title claimants and other Aboriginal people.

16. By relying on the definitions of “Aboriginal land” and “owner”, section 5 may provide Aboriginal persons other than traditional owners with a right to veto a proposed Wild Rivers declaration. Section 5, it is submitted, could operate to provide all of the Aboriginal persons and/or corporations listed from (a) to (h) under the definition of “owners” with that right, requiring their agreement in writing to a declaration.

17. Thus, for example, if the Bill is passed in its current form and there was a proposal to declare a wild river in the southern Gulf of Carpentaria (and the proposed transitional provisions also applied), CLCAC would be concerned that consent may possibly be required from all of the following (in addition to native title holders/traditional owners) before a declaration could be made:

- The local Aboriginal Shire Council; and
- grantees of Aboriginal land under the *Aboriginal Land Act 1991* ; and
- any individual Aboriginal person who has been given a lease by a Shire Council on DOGIT land; and
- the trustee of any community purpose reserve; and
- any body or person holding freehold on trust for an Aboriginal person or corporation; etc.

18. Such an approach is obviously flawed if the aim of the Bill (as has been repeatedly stated by Mr Abbott) is to recognise rights of „traditional owners‟ to be consulted about Wild River declarations. On the contrary, the Bill will operate to undermine the rights of traditional owners.

19. Such an approach is also clearly opposite to Aboriginal law and custom operating in the southern Gulf of Carpentaria which provides that only traditional owners may speak for country.

20. If the intent of the Bill was to recognise the right of „traditional owners‟ to be consulted about Wild River declarations, then it has failed. In circumstances where there is a registered native title claim or positive native title determination, then it is those Aboriginal persons who have made the claim or have the benefit of the determination, and only those persons, who should have the right to veto a proposed Wild River declaration.

21. CLCAC is also concerned because it is not entirely clear how the operation of the *Native Title Act* in its current form might deleteriously affect the rights and interests of native title holders if other Aboriginal persons were given the right to veto a Wild River declaration through the operation of this Bill.

22. Complex legal questions are also raised when we consider the operation of s109 of the Constitution.

23. It is CLCAC‟s submission that the only sure result if the Bill is passed will be that it will result in conflict between Aboriginal persons and groups, between traditional owners and others.

24. CLCAC is also concerned that the Bill refers only to „native title holders‟ and „land where native title exists‟ and does not recognise registered native title claimants.

25. CLCAC notes that the procedures set out for obtaining the agreement of native title holders in section 6 is facultative rather than mandatory, with section 5 requiring only that the „agreement‟ be „in writing‟. The concern is that significant challenges will be experienced in getting this conveyance correct.

26. Finally, noting as referred to above, the success of CLCAC‟s ranger program, it is impossible to see how section 8 or section 4(3)(b) can be enforced. Section 8 was added as an afterthought and clearly as a form of inducement, however, it represents a duty of imperfect obligation and is simply not enforceable by mandamus. Section 8(2)(d) also raises numerous practical difficulties, raising more questions than answers, for example: What work is being promised? Where? What will be the pay and conditions?

CONCLUSION

27. CLCAC submits that the Bill will only increase uncertainty and result in conflict between Aboriginal groups.

28. With respect, if Senator Scullion wants to facilitate economic development for the benefit of Indigenous people and at the same time protect the environmental values of undisturbed river systems, then he should instead seek bipartisan agreement to provide for:

a. adequate land acquisition and economic development funding for traditional owners; and

b. adequate funding for traditional owners to maintain, protect and manage their lands and waters.

29. Rather than pursue this Bill, amendments should be made to the *Native Title Act* to provide native title claimants and native title holders with the right to prior informed consent. Such an approach has the added advantage of affording a national (rather than in one part of one State) regime and makes use of an existing defined process for seeking the consent or agreement of traditional owners to development proposals.

30. Whilst CLCAC welcomes the Liberal Party‟s recent attempts to expand the rights of traditional owners (and indeed Mr Abbott‟s consultations with us about his proposals), we believe that the approach has been unfortunately misguided.

32. CLCAC urges the Committee to take into account the concerns raised above and submits that the Bill should be abandoned.