



18 February 2011

Mr Stephen Boyd
Committee Secretary
House of Representatives Standing Committee on Economics
PO Box 6021
Parliament House
CANBERRA ACT 2600
Via email: economics.reps@aph.gov.au

Dear Mr Boyd

Re: Inquiry into Indigenous economic development in Queensland and review of the *Wild Rivers (Environmental Management) Bill 2010*

Please find enclosed the Wilderness Society's submission to the above Inquiry. This submission is presented as a 6-part series of reports each addressing specific areas of the Terms of Reference for the Inquiry, under the overarching theme of 'Protecting Rivers, Supporting Communities'.

These reports cover key issues as follows:

- Report 1: Summary Report and Recommendations
- Report 2: Queensland's *Wild Rivers Act 2005*
- Report 3: Environmental Regulation in Queensland
- Report 4: Cape York Peninsula Policy Settings
- Report 5: Sustainable Development on Cape York Peninsula
- Report 6: Indigenous Rights and Wild Rivers

As this Submission argues, there is absolutely no justification for Federal intervention on the *Wild Rivers Act 2005*, and outlines in detail why the *Wild Rivers (Environmental Management) Bill 2010* introduced by Opposition Leader Tony Abbott should not be supported by the Australian Parliament.

The Wilderness Society maintains that important matters of ensuring the sensible protection of our healthy river systems, supporting sustainable Indigenous economic development, and enhancing Indigenous rights across all regulatory areas are issues that the Australian Parliament should properly prioritise in place of Mr Abbott's ill-conceived, flawed attack on the environment.

Our submission highlights the enormous economic potential for Cape York from environmental protection and associated eco-tourism and commercial activity, particularly around a future World Heritage listing. We also indicate that the Queensland Government could improve the Wild Rivers initiative to formalise a negotiation process, build in cultural recognition, and enhance the Indigenous Wild River Ranger program.

We look forward to the opportunity to present the information, arguments and recommendations raised in our submission to the Committee at a future public hearing. Please contact my Queensland colleague Dr Tim Seelig, Queensland Campaign Manager, on 0439 201 183 or tim.seelig@wilderness.org.au about opportunities for representatives of The Wilderness Society to appear before the Committee, or any other matters regarding this submission.

Yours Sincerely

A handwritten signature in blue ink, consisting of a stylized 'L' followed by a long horizontal line that ends in a small hook.

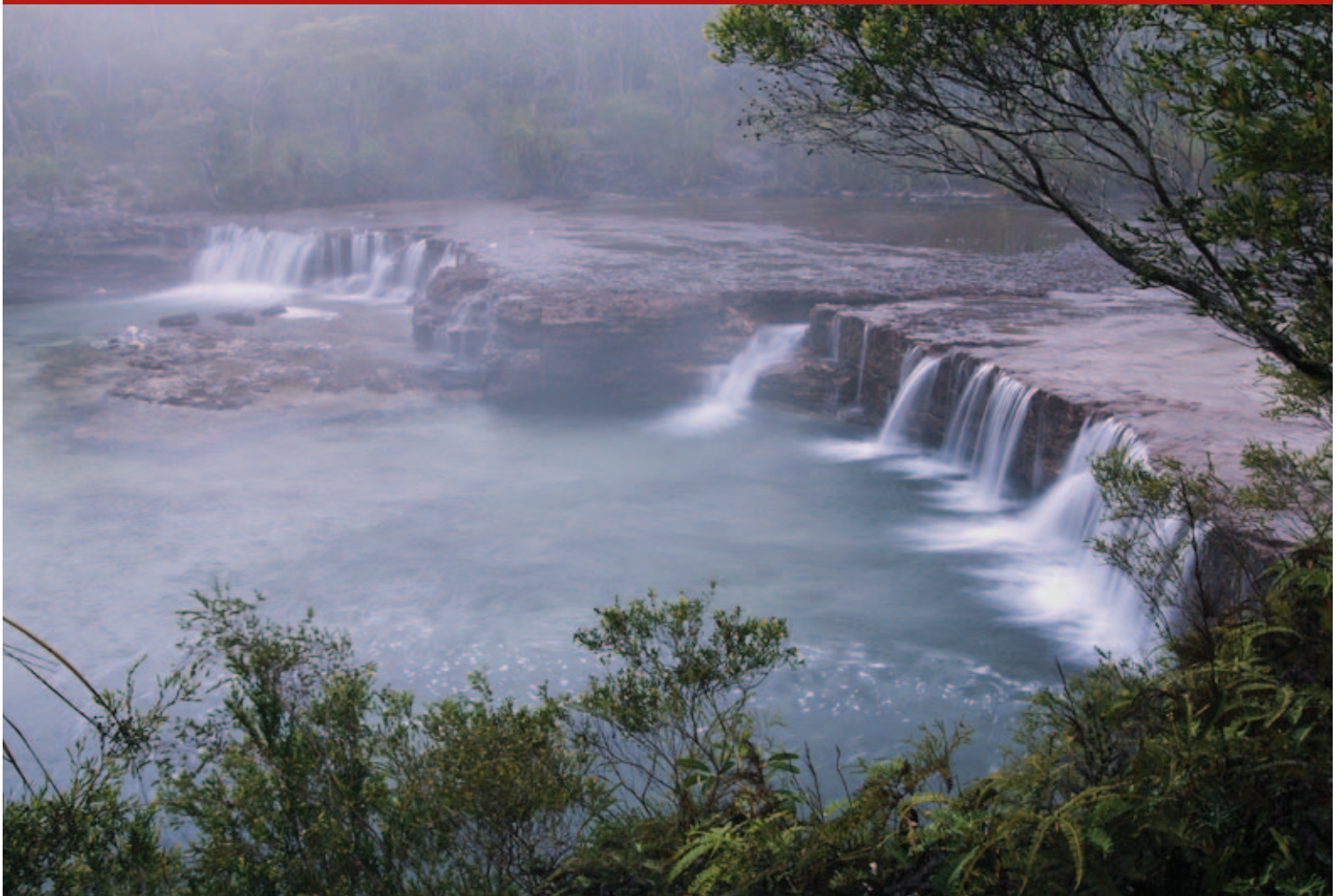
Lyndon Schneiders
National Campaign Director
The Wilderness Society

Protecting Rivers, Supporting Communities

A report series by The Wilderness Society for the House of Representatives Economics Committee's *Inquiry into issues affecting Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010*

Summary Report and Recommendations

Report 1 of 6 – Feb 2011



How this Submission is Organised

This submission is organised as a report series - “*Protecting Rivers, Supporting Communities*” - with each report focussing on the main themes drawn from the Terms of Reference to the Inquiry:

- **Report 1: Summary Report and Recommendations**
- **Report 2: Queensland’s *Wild Rivers Act***
- **Report 3: Environmental Regulation in Queensland**
- **Report 4: Cape York Peninsula Policy Settings**
- **Report 5: Sustainable Development on Cape York Peninsula**
- **Report 6: Indigenous Rights and Wild Rivers**

This summary report provides an overall Executive Summary and recommendations for the Committee, with the rest of the report outlining a summary of each report, including key diagrams, tables and information boxes.

The following table outlines how the reports address the Terms of Reference to the Inquiry (excluding this summary report):

Terms of Reference	Relevant Reports
The Committee should consider:	
1. existing environmental regulation, legislation in relation to mining and other relevant legislation including the <i>Wild Rivers Act (Qld) 2005</i> and the <i>Environment Protection and Biodiversity Conservation Act 1999</i> ;	Report 2 Report 3 Report 4
2. the impact which legislation in the form of the <i>Wild Rivers (Environmental Management) Bill 2010</i> would have, if passed; and	Report 2 Report 6
3. options for facilitating economic development for the benefit of Indigenous people and the protection of the environmental values of undisturbed river systems.	Report 4 Report 5 Report 6
The inquiry should pay particular attention to the following:	
- The nature and extent of current barriers to economic development and land use by people, whether Indigenous or non-Indigenous, including those involved in the mining, pastoral, tourism, cultural heritage and environmental management;	Report 4 Report 5
- Options for overcoming or reducing those barriers and better facilitating sustainable economic development, especially where that development involves Indigenous people;	Report 4 Report 5
- The potential for industries which promote preservation of the environment to provide economic development and employment for Indigenous people;	Report 5
- The effectiveness of current State and Commonwealth mechanisms for appropriate preservation of free-flowing river systems which have much of their natural values intact, including the preserving of biodiversity;	Report 2 Report 3 Report 6
- Options for improving environmental regulation for such systems;	Report 2 Report 3 Report 6
- The impact of existing environmental regulation, legislation in relation to mining and other relevant legislation on the exercise of native title rights and on the national operation of the native title regime and the impact which legislation in the form of the <i>Wild Rivers (Environmental Management) Bill 2010</i> would have on these matters.	Report 4 Report 6

Executive Summary

A Sensible River Protection Framework

Australians are privileged to retain some of the world’s last free-flowing and healthy rivers – Queensland’s wild rivers. Like other Australian icons of the natural world, including the Great Barrier Reef, Tasmania’s forests and the rainforests of the Wet Tropics, these river systems require a robust form of protection and management to ensure the ongoing health of the rivers. Many of these rivers flow through Indigenous-owned land so it is vital that when protecting these rivers and their associated landscapes that this happens hand in glove with sustainable economic futures, rather than pursuing a destructive path of broad-scale land clearing, massive irrigation works or strip mining.

Queensland’s *Wild Rivers Act 2005* provides practical protection of these priceless river systems, controlling environmentally destructive forms of development, but supporting sustainable economic activities. Passed in 2005 by the Beattie Government with the support of the Queensland Liberal Party and the consensus of the Parliament, the legislation works by ensuring a setback for highly destructive development away from sensitive waterways and wetlands (the “High Preservation Area”) while regulating the impacts of such development in the major parts of the catchment (the “Preservation Area”). It is light touch regulation: land tenure does not change, land management is not affected, and a full range of current activities like grazing, fishing, tourism, natural resource management and even mining still continue in declared Wild River areas. There is no prohibition on new economic activities.

In respect to Traditional Owner rights, the *Wild Rivers Act 2005* states categorically that Native Title is not affected by a Wild River declaration. In addition, it provides a water allocation specifically for Indigenous economic and community use - the first such water allocation scheme of its kind in Australia. Complementary to the legislation, the Queensland Government has established an Indigenous Wild River Ranger program. Thirty-five Indigenous people are now employed under the program, with another sixty-five promised.

No other jurisdiction, policy or legislation provides real protection for Wild Rivers other than these Queensland laws. Everywhere else, business as usual reigns supreme and our rivers and waterways continue to be degraded beyond repair. The Commonwealth Government’s *Environmental Protection and Biodiversity Conservation Act 1999* is too limited in its scope to ensure holistic river management, and there is no other regulatory tool or program capable of providing this. Indeed, this leading-edge form of stand-alone river protection legislation that has the ability to manage destructive threats across an entire catchment area, while supporting sustainable development, sets a new international benchmark for sustainable use and management of rivers. Rather than attacking this legislation, members of Parliament should be celebrating this initiative which moves conservation and natural resource management into a truly whole-of-landscape approach.

Positive Reforms Smothered

Despite these positive facts, there has been a great deal of misinformation and misreporting about how and why the Wild Rivers initiative came about, how it operates, and how it affects economic development. For example false and deceptive claims have been made that Wild Rivers stops market gardens, pastoralism, traditional hunting and fishing, banana plantations, and the construction of tourism lodges. None of this is correct. Assertions that the Wild Rivers scheme has stopped passion-fruit farms and even social housing construction in Hope Vale in south-eastern Cape York Peninsula are simply wrong, particularly given there is not a Wild River declarations within 300 kilometres of this township.

While the *Wild Rivers Act 2005* applies state-wide, it is on Cape York Peninsula that the vehement opposition over the legislation has been most intense. Much of the polemic about Wild Rivers has been led by Mr Noel Pearson of the Cape York Institute (not an elected or representative body) and its associated regional organisations, including the Cape York Land Council and the Balkanu Cape York Development Corporation. Notably it has enjoyed the strong editorial support of The Australian newspaper. A small number of individuals from these agencies have been engaged in a fierce and misleading campaign against the legislation for over five years.

It is critical to recognise that, despite claims to the contrary, Mr Pearson and the Cape York Land Council were intimately involved in and provided public endorsement to the legislative framework that governs and provides the policy setting for the Wild Rivers initiative on Cape York Peninsula – the *Cape York Peninsula Heritage Act 2007*. This Act, supported by Indigenous, conservation, mining and agricultural stakeholders, aimed at resolving complex land use matters and achieving a lasting and balanced approach to the future of Cape York Peninsula and its people.

The Heritage Act has created a special land clearing code under the *Vegetation Management Act 1999* for Indigenous communities to clear vegetation for economic development purposes, a process for a World Heritage listing for Cape York Peninsula, reform of National Parks in the region to deliver Aboriginal ownership and co-management, and the confirmation that Native Title rights are not impacted by the *Wild Rivers Act 2005*. Crucially, the Heritage Act negotiations were completed with a clear agreement from all parties that Wild River declarations on Cape York Peninsula *would proceed*.

The Heritage Act complements the highly positive and successful State Land Dealings on Cape York Peninsula overseen by the Cape York Tenure Resolution Implementation Group. An impressive 1,546,849 hectares of land have been acquired since 1994 for the return of land to its Traditional Owners and also for the creation of new protected areas. This dual land rights and conservation agenda is unparalleled anywhere in Australia, but has received very little attention or recognition due to entrenched politicking on Cape York Peninsula.

Overall in recent times, the reality of Wild Rivers has been utterly distorted, a breakthrough agreement has been smothered by a dishonest campaign, and one of the most positive land rights and conservation stories in the country has been all but ignored. It is within this context that Federal Opposition Leader Tony Abbott and the Liberal-National Coalition are seeking to defeat environmental regulations in place, convert property rights into an unfettered right to industry, and to capitalise politically in the process.

Sustainable Development on Cape York Peninsula

As part of their campaign, Mr Abbott, Mr Pearson and the Coalition claim that Wild Rivers is a major barrier to economic development. Any objective reading of the *Wild Rivers Act 2005*, however, reveals the shallowness of this argument. Any rudimentary analysis of economic conditions on Cape York Peninsula also reveals that the real barriers to economic development include geographic remoteness; lack of equity and working capital; lack of public and private investment in sustainable industries; the need for further investment in education, skills and training and; and poor transport and communication infrastructure and access. None of these are contingent on whether or not there is a Wild River declaration in place.

In fact, there is a clear and strong case for using the declaration of Cape York Peninsula's wild rivers, and the ongoing management of the region's extraordinary natural and cultural values, as the basis for a major sustainable economic development strategy in the region, built around tourism, Indigenous conservation, cultural and natural enterprises, the carbon economy, social services and the customary economy. Already, there is massive public and private investment in environmental services, which offers genuine job and enterprise opportunities in a conservation economy. This is an essential part of a mixed economic life in remote areas and an important component of Australia's transition to ecological economics and a low carbon-pollution future.

The most promising area for job expansion on Cape York Peninsula is tourism, with the capacity to deliver hundreds, if not thousands of jobs. According to one of the very few reports looking at Cape York Peninsula employment, tourism would out-scale all other forms of employment combined, providing huge potential for Indigenous economic opportunity on Cape York Peninsula. Indeed with the combined marketing of World Heritage listing and Wild River declarations, a world-class walking trail (as is currently being investigated by the Queensland Government with the support of the Balkanu Cape York Development Corporation), and a rich Indigenous cultural experience, the potential for tourism growth in the region is simply enormous. Such an industry would dwarf destructive industries such as mining, which according to the Australian Bureau of Statistics employed just 1% of Indigenous people in the region in 2006.

A Deeply Flawed Bill from Tony Abbott

Rather than embracing these immense opportunities for a sustainable and healthy economy for Cape York Peninsula, Mr Abbott and the Coalition have instead reverted to the outdated notion that environmental protection equates with no jobs and shutting down development. As the centre-piece of this thinking, Mr Abbott has re-introduced into the House of Representatives a private member's bill - the *Wild Rivers (Environmental Management) Bill 2010* - designed to "overturn" Wild River declarations and give the green light to destructive forms of development in and near sensitive waterways.

It does this by proposing an unprecedented veto for certain landholders, resulting in a situation where individuals or groups can not only effectively opt out of valid environmental regulations, but can defeat an entire Wild River declaration. The Abbott Bill makes it practically impossible to protect rivers into the future and sets the bar for protection at a height that no industry is expected to reach in gaining approval for destructive practices. It is complete hypocrisy.

The Bill seriously undermines the purpose of managing a river system as an ecological whole and would create a dangerous precedent for the removal of a State's regulatory responsibilities. This is despite the fact that Wild River declarations do not stop development or affect land tenure or ownership and that the *Wild Rivers Act 2005* states categorically that Native Title rights are not affected. In other words, Mr Abbott has failed to demonstrate both an economic rationale for his Bill and give any indication of what legal rights have been infringed to warrant this unprecedented application of a veto.

The deep hypocrisy of this Bill is that it proposes unprecedented veto powers over conservation, but does not apply the same principle to destructive development: Indigenous people can veto the protection of a river system, but cannot veto the destruction of their homeland, where Native Title rights, land tenure and ownership *are* demonstrably affected.

The flawed logic of Mr Abbott's Bill is that it presupposes that development by Indigenous people is prevented by Wild Rivers, that social justice concerns in relation to remote area Indigenous people can be addressed by removing environmental regulations, and that there should be an unfettered right for large industries to undertake destructive development on Cape York Peninsula because of Indigenous social disadvantage. This ignores reality and overlooks how protecting and managing natural resources, maintaining cultural connections and landscape on homelands, and avoiding the environmental consequences of poorly regulated mining or other destructive development can provide huge economic, social, cultural and environmental benefits to many Indigenous communities on Cape York Peninsula.

There is absolutely no justification for Federal intervention on the *Wild Rivers Act 2005*. Matters of enhancing Indigenous rights across all regulatory areas, supporting Indigenous sustainable economic development, and ensuring the sensible protection of our healthy river systems is something that the Australian Parliament should properly prioritise in place of Mr Abbott's ill-conceived and deeply flawed attack on the environment. The Wilderness Society recognises that there is a case for improving the Wild Rivers initiative around formalised negotiations, but it is the job of the Queensland Parliament to make such changes if necessary.

Quick Facts

- The *Wild Rivers Act 2005* is a critical component of the national water reform agenda, and has roots in Commonwealth Government policy work conducted in the 1990s
- The Queensland Liberal Party voted for the *Wild Rivers Act 2005* in the Queensland Parliament and the National Party abstained
- Ten river systems are currently protected under the *Wild Rivers Act 2005*, with another twelve promised for future protection - this will focus on the three major wild river regions of the Channel Country, the Gulf of Carpentaria and Cape York Peninsula
- The Indigenous Wild River Ranger program employs 35 Indigenous people, with another 65 jobs promised by the Queensland Government
- The *Wild Rivers Act 2005* is a vital piece of Queensland's regulatory system, as it is the only holistic regulation that links the health of the catchment with the health of the river
- The *Environment Protection and Biodiversity Conservation Act 1999* is too piecemeal and focussed on protecting certain places and individual species rather than whole-of-landscape protection, including river systems
- Large-scale irrigated agriculture and native forest logging are the most tightly controlled development activities on Cape York Peninsula, given their very high environmental impact
- The only major project affected by a Wild River declaration is the Cape Alumina bauxite mine planned on the Steve Irwin Wildlife Reserve, due to 500m buffers around important springs - there are currently no examples of an Indigenous-owned business that has been stopped or seriously stifled by a Wild River declaration
- The *Cape York Peninsula Heritage Act 2007* supported by Indigenous, conservation, mining and agricultural stakeholders, aims to resolve many complex land use matters and to achieve a balanced response to competing agendas
- An impressive 1,546,849 hectares of land have been acquired on Cape York Peninsula since 1994 for the return to Traditional Owners, and creation of new protected areas, as part of a dual land rights/conservation agenda
- According to Australian Bureau of Statistics data, in 2006 mining represented just 1% of Indigenous jobs on Cape York Peninsula
- There is very little prospect for future jobs arising in the agricultural industry on Cape York Peninsula, due to major natural constraints (including soil, climate and dam sites)
- Tourism, land management and the emerging carbon economy show huge potential to deliver real Indigenous jobs on Cape York Peninsula, with one Government report suggesting tourism alone would out-scale all other forms of employment combined
- The Abbott Bill establishes an unprecedented veto for Indigenous interests, resulting in a situation where individuals or groups can opt out of valid environmental regulations

Recommendations to the Inquiry

- 1. Reject the Abbott Bill:** The Committee should not support the *Wild Rivers (Environmental Management) Bill 2010* and urge the Parliament to vote against this Bill - it is unworkable, unnecessary, legally tenuous and achieves nothing in addressing Indigenous disadvantage.
- 2. Acknowledge the importance of the *Wild Rivers Act 2005*:** The Committee should acknowledge and endorse Queensland's groundbreaking *Wild Rivers Act 2005* as a leading example of healthy river protection and promotion of sustainable development, and the critical role it plays in Queensland's environmental regulatory system.
- 3. Planning approvals support:** The Committee should urge the Queensland Government to establish a dedicated taskforce aimed at assisting Indigenous organisations or individuals in navigating the planning system.
- 4. Remove mining exemptions in the *Wild Rivers Act 2005*:** The Committee should urge the Queensland Government to remove exemptions for the Aurukun bauxite mine and PNG gas pipeline in the *Wild Rivers Act 2005*, on the basis that all development proponents, particularly miners, should have to adhere to the same environmental standards as everyone else.
- 5. Acknowledge existing settlement frameworks already in place on Cape York Peninsula:** The Committee should acknowledge that there are significant settlement frameworks already in place in relation to Cape York Peninsula, chiefly the *Cape York Peninsula Heritage Act 2007* and Cape York Tenure Resolution Group.
- 6. Acknowledge the limited prospect of jobs in destructive industries on Cape York Peninsula:** The Committee should acknowledge that mining and agriculture currently account for a very small number of Indigenous jobs on Cape York Peninsula, with significant growth in these areas highly unlikely.
- 7. Act to realise the huge potential from environmental protection on Cape York Peninsula:** The Committee should acknowledge the huge potential for jobs and economic development on Cape York Peninsula that could be derived from environmental protection, land management, a carbon economy, and tourism, including World Heritage listing, and urge the Commonwealth and Queensland Governments to act to realise such potential.
- 8. Ensure procedural requirements and structured negotiations for Wild River declarations:** The Committee should urge the Queensland Government to formalise the existing structure for Indigenous consultation and negotiation for nominations of Wild Rivers, and commit sufficient resources for Traditional Owners' engagement in the process.
- 9. Ensure cultural recognition in Wild Rivers initiative:** The Committee should urge the Queensland Government to include provisions for Aboriginal cultural recognition into the *Wild Rivers Act 2005*, the Wild Rivers Code and Wild River declarations (in accordance with the wishes of Traditional Owners).
- 10. Enhance Indigenous Wild River Ranger Program:** The Committee should urge the Queensland Government to strengthen the Indigenous Wild River Ranger program by authorising under the *Wild Rivers Act 2005*: a) recognition for conservation management in accordance with the laws and customs of Traditional Owners; b) permanent employment; c) ranger enforcement powers; d) accredited Indigenous training organizations; and e) integration with other Indigenous conservation strategies and plans wherever possible.
- 11. Explain Native Title property interests in Wild Rivers initiative:** The Committee should urge the Queensland Government to work with the National Native Title Tribunal to produce a detailed information document clarifying how the *Wild Rivers Act 2005* and Wild River declarations do not affect Native Title to any extent, including how for the purposes of environmental regulation, Aboriginal lands are treated as equivalent to other freehold.
- 12. Implement *UN Declaration on the Rights of Indigenous Peoples*:** The Committee should urge the Commonwealth Government to lead community dialogue and establish a formal public process to identify the most appropriate way of incorporating the *UN Declaration on the Rights of Indigenous Peoples* into Australian law and policy-making, and enhancing Indigenous rights consistently across the board.
- 13. Reform *Native Title Act 1993*:** The Committee should urge the Commonwealth Government to review and reform the *Native Title Act 1993* to ensure it accords with the *UN Declaration on the Rights of Indigenous Peoples* and that rights are given effect consistently in relation to all Aboriginal lands and waters across all parts of the country, and in respect to all land uses.

Summary of Submission Reports

Summary of Report 2: Queensland's *Wild Rivers Act*

This report provides background to the genesis of Queensland *Wild Rivers Act 2005* and the surrounding national political debate, a simple explanation of how the legislation works, a repudiation of the misinformation about the initiative, and recommendations for improving the Wild Rivers initiative. A very brief summary of each section in the report is as follows:

Queensland's Healthy Rivers: Queensland has some of the world's last healthy river systems, including in Cape York Peninsula, the Gulf Country, the Channel Country, the Paroo River, and some coastal streams.

Rivers Under Threat: Around the world and in Australia, there are few remaining healthy river systems. Of these, many are under threat by destructive and uncontrolled development, and poor land and water management. The story is the same for Queensland.

Development of the Wild Rivers Initiative: Queensland's *Wild Rivers Act 2005* is part of a national water reform agenda to improve and maintain the health of our rivers. Passed in 2005 by the Beattie Labor Government with the support of the Liberal Party, there are now 10 river systems protected under the initiative, with another 12 identified for future protection. There are also 35 Indigenous Wild Rivers Rangers employed, with another 65 positions promised.

How Wild Rivers Works: The *Wild Rivers Act 2005* is enabling legislation best described as a planning and management approach to river conservation. In practice it means that destructive forms of development such as strip-mining and polluting irrigation schemes have been set back from major watercourses and wetlands. Other activities such as pastoralism, construction of infrastructure and fishing continue throughout a declared wild river area.

Addressing the Misinformation about Wild Rivers: There has been a great deal of misinformation and misreporting about how the Wild Rivers initiative operates. For example claims that Wild Rivers stops market gardens, pastoralism, hunting and fishing, or the construction of tourism lodges, are false.

A diagram of How Wild Rivers Works (pp.12-13), a map of declared and proposed Wild River areas (p.14) and a table on Addressing the Misinformation About Wild Rivers (p.15) from this report are included in this summary report.

Summary of Report 3: Environmental Regulation in Queensland

This report provides an overview of existing environmental regulation in Queensland, and considers whether this regulatory system is adequate to protect healthy river systems, using Cape York Peninsula as a case study to demonstrate how environmental regulation affects key development activities. A brief summary of each section in this report is as follows:

Environmental Regulation in Queensland: Queensland's environmental legal system is comprised of four levels; international law, federal law, state law and common law. The major area of regulation is governed by the State of Queensland, which has powers under the Australian Constitution to regulate land and water management. Some Commonwealth laws, particularly the *Environment Protection and Biodiversity Conservation Act 1999* also play a key role in this regulatory system.

Healthy River Protection – Are Current Regulations Adequate?: Using a benchmark test of the precautionary principle, we broadly conclude that the Queensland regulatory system is reasonably well developed to provide for the protection of healthy river systems, mostly because of the *Wild Rivers Act 2005*, and the vital gap it fills in whole-of-catchment management. Overturning the *Wild Rivers Act 2005*, as the Opposition Leader Tony Abbott has previously stated as his intention with his Wild Rivers (Environmental Management) Bill 2010, would greatly erode the effectiveness of this regulatory system.

Environmental Regulation and Development Activities on Cape York Peninsula: A summary table outlining various forms of development activities with analysis of the level of applicable environmental regulation, indicates that large-scale irrigated agriculture and native forest logging are the most tightly controlled development activities in the region, given their very high environmental impact. Other development activities are either strongly supported by the regulatory regime, or require reasonable regulation to minimise environmental impact.

A table on Environmental Regulation and Economic Development on Cape York Peninsula from this report is included on p.16 of this summary report.

Summary of Report 4: Cape York Peninsula Policy Settings

This report provides an overview of the relevant policy settings for Cape York Peninsula, including key legislation and agreements that have sought to resolve long-standing tensions and competing visions over the future of the region. A brief summary of each section of this report is as follows:

Reconciling Competing Visions: Reconciling competing visions for land use and sustainable development on Cape York Peninsula has occupied the minds of the local community, policy makers and decision makers since the mid 1980's. There is now in place considerable dedicated enabling legislation and policy frameworks specific to Cape York Peninsula at the state level to support sustainable development, conservation and land justice.

Cape York Heads of Agreement: The Cape York Heads of Agreement (Heads of Agreement) was signed by conservation, Indigenous and pastoral parties in 1996 and by the Queensland Government in 2001. It addressed issues of economic development, resolution of native title issues, Indigenous advancement and conservation in the region.

Cape York Peninsula Heritage Act 2007: The Act was designed to resolve the problems of the Cape York Heads of Agreement and ongoing conflict surrounding Wild Rivers and laws controlling land clearing. The Act facilitates both the advancement of work towards recognising and protecting the region's World Heritage values, and also the capacity to undertake sustainable economic activities in support of Indigenous development. Importantly, the Act confirmed the protection of Native Title rights in Wild River declarations, facilitated special Indigenous water reserves, and created a process for Indigenous Community Use Areas to advance Indigenous economic development.

Cape York Tenure Resolution: Created in 2004, the Cape York Tenure Resolution Group process seeks to deliver both land return (and land justice) to Cape York Traditional Owners and the creation of new National Parks (Cape York Peninsula Aboriginal Land) to protect high conservation value areas in the region. So far 1,546,849 hectares of land have been acquired for conservation and cultural outcomes since 1994, with 575,000 hectares of new National Parks created, and 617,000 hectares converted to Aboriginal tenure (of which 90,000 hectares is subject to a nature refuge agreement) through the Tenure Resolution Group process.

Other Legislation and Policy: There are several other pieces of other legislation which either relates to or focus exclusively on Cape York Peninsula. These include: the *Family Responsibilities Commission Act 2008*; the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* and the *Alcan Queensland Pty. Limited Agreement Act 1965*; a suite of welfare reform, education and social policy initiatives, and alcohol management laws. In addition, the Queensland and Commonwealth Governments provide significant public funding to the Cape York Institute and Balkanu Cape York Development Corporation to undertake a range of related activities.

An information box on the Cape York Peninsula Heritage Act 2007 from this report table is included on p.17 of this summary report.

Summary of Report 5: Sustainable Development on Cape York Peninsula

This report provides a basic analysis of sustainable development potential on Cape York Peninsula, with an emphasis on opportunities for Indigenous people. This includes baseline available demographic and labour force data; a snapshot of the private sector including small business; and the emerging (and potentially substantial) opportunities in the industries of tourism, land management and other environmental services. A brief summary of each section of this report is as follows:

Demographic and Labour Force Context of Cape York Peninsula: The labour force data for Cape York Peninsula (taking into account this is more indicative than precise), demonstrates that in 2006, the majority of working Indigenous people on Cape York Peninsula were employed in “Public Administration and Safety” (58%) and “Health Care and Social Assistance” (11%). The largest industry for non-Indigenous people was “Manufacturing” (19%), in which only 4% of Indigenous people worked. Mining employed very few Indigenous people (1%). In 2009, indicative figures across Cape York indicated total unemployment of some 914 persons, a rate of 12.6% (as a weighted average).

Private Sector Economic Activity and Development: There are a range of private sector small and medium enterprises operating in or near Cape York Peninsula’s Indigenous settlements, which show significant potential for expansion. One of the most promising areas for expansion, as outlined in the *Cape York Indigenous Employment Strategy 2005* commissioned by the Commonwealth and Queensland Governments, is tourism, with the capacity to deliver up to one thousand jobs. According to this report, tourism would out-scale all other forms of employment combined, providing huge potential for Indigenous economic opportunity on Cape York Peninsula.

Emerging Sustainable Industries: Cape York Peninsula maintains extraordinary ecological and cultural values, which provide a huge natural competitive advantage for the region. There are a number of seriously under-realised employment opportunities in areas such as tourism, land management and carbon initiatives (particularly savanna burning). There is an urgent need for Government support and capacity-building in these areas.

A table on Employment by Industry on Cape York Peninsula 2006 is included on p.18 of this summary report.

Summary of Report 6: Indigenous Rights and Wild Rivers

This report provides an overview of the intersection of Indigenous rights and conservation and environmental decision-making, gives context to how the Wild Rivers initiative operates with respect to Indigenous rights, and provides a critique of the the Opposition Leader Tony Abbott’s *Wild Rivers (Environmental Management) Bill 2010* (the “Abbott Bill”). A brief summary of each section of this report is as follows:

Indigenous Rights, Conservation and the Abbott Bill: Rather than being motivated by a growing international consensus about the rights of indigenous peoples, it is clear that the Abbott Bill is motivated primarily by political calculation, and fails to make a constructive contribution to the important issues of enhancing Indigenous rights across all areas, and ensuring we effectively manage our free-flowing river systems.

Environmental Decision-Making: At the moment there is a need to differentiate, and codify to a sufficient degree, the rights of decision-making in environmental regulation in Australia. In our view, a schema that accords with well-established legal and ethical parameters would cover: a veto (where Aboriginal land and resources are subject to destruction or appropriation); a right to negotiate (in relation to some development proposals and environmental regulations applying over Aboriginal lands); and consultation (used where public policy and environmental regulation of benefit to the general community but where there is no tangible effect on rights or property). A Wild River declaration should not be a matter for veto on environmental regulation, but it is it a matter that requires more than simple consultation.

The Wild Rivers Initiative: The *Wild Rivers Act 2005* is lawful in relation to Aboriginal land ownership and Native Title Future Acts - it has not triggered existing negotiation instruments such as Indigenous Land Use Agreements. Section 44(2) of the *Wild Rivers Act 2005* is a clear statement that a Wild River declaration or the Wild Rivers Code as they apply for the purposes of an applicable Act cannot affect Native Title.

The Abbott Bill – Why it Fails: The political intent of the Abbott Bill is to try to overturn or undermine existing Wild River declarations in Queensland, and prevent new ones occurring - the consequence of which will be to authorise destructive forms of development in and near healthy river systems. Many Indigenous interests also lie in protecting and managing natural resources, maintaining the cultural connections on their homelands, and avoiding the environmental consequences of poorly regulated mining or other destructive development.

Addressing Concerns about Wild Rivers: The Wilderness Society’s policy is to seek conservation outcomes that are consistent with Aboriginal rights, as recognised under Australian Law. We consider that law reform with respect to recognition of Indigenous rights is, and should be, ongoing through the political and judicial process. We would therefore support further development of the *Wild Rivers Act 2005* at the State level, and reform of the *Native Title Act 1993* at the Commonwealth level.

An Indigenous Rights and Environmental Protection Schema from this report is included on p.19 of this summary report, with information boxes on Wild Rivers and Native Title (p.18) and the Consequences if the Abbott Bill Passes (p.19) also included.

How does Wild Rivers work? - The Wenlock River example

Mining Exclusion:

This is the 'Coolibah Springs' area on the Steve Irwin Wildlife Reserve, where Cape Alumina wants to strip mine for bauxite. The 500m buffer zone here has excluded mining from this sensitive area.

Floodplain Management Area:

Within this area the construction of levees and flow-impeding development is regulated to ensure connectivity between this area and the main river channel

Native Title:

Native Title rights are formally protected under the Wild Rivers Act. A Wild River declaration does not affect land tenure.

Water Extraction:

Water extraction is capped at a sustainable level of no more than 1% of mean annual discharge. Within this cap, a special water reserve is made for Indigenous economic use.

Land Management:

There are 6 Indigenous Wild River Rangers working within the Wenlock River catchment, addressing problems of invasive weeds, feral animals and fire management. In total there are 40 Indigenous rangers as part of this program, with another 60 promised by the Bligh Government.

Buffer Zones:

These orange areas are the main feature of a Wild River declaration - the buffer zone around the most important rivers, lakes, wetlands and springs. The buffer here is 1km either side of the river. Within these areas, strip mining, intensive irrigation and dams are not allowed. Pastoralism, fishing, buildings, and other lower impact activities are still allowed in this zone.

Nominated Waterways:

Some development has to be setback a reasonable distance from these smaller tributaries, including clearing for mines, and aquaculture.

Preservation Area:

Encompassing over 80% of most declared Wild River areas, within this zone mining, agriculture, aquaculture, and other intensive development is allowed. The Wild Rivers Code sets some benchmarks for these activities, on top of existing environmental regulations.

Buildings and Outstations:

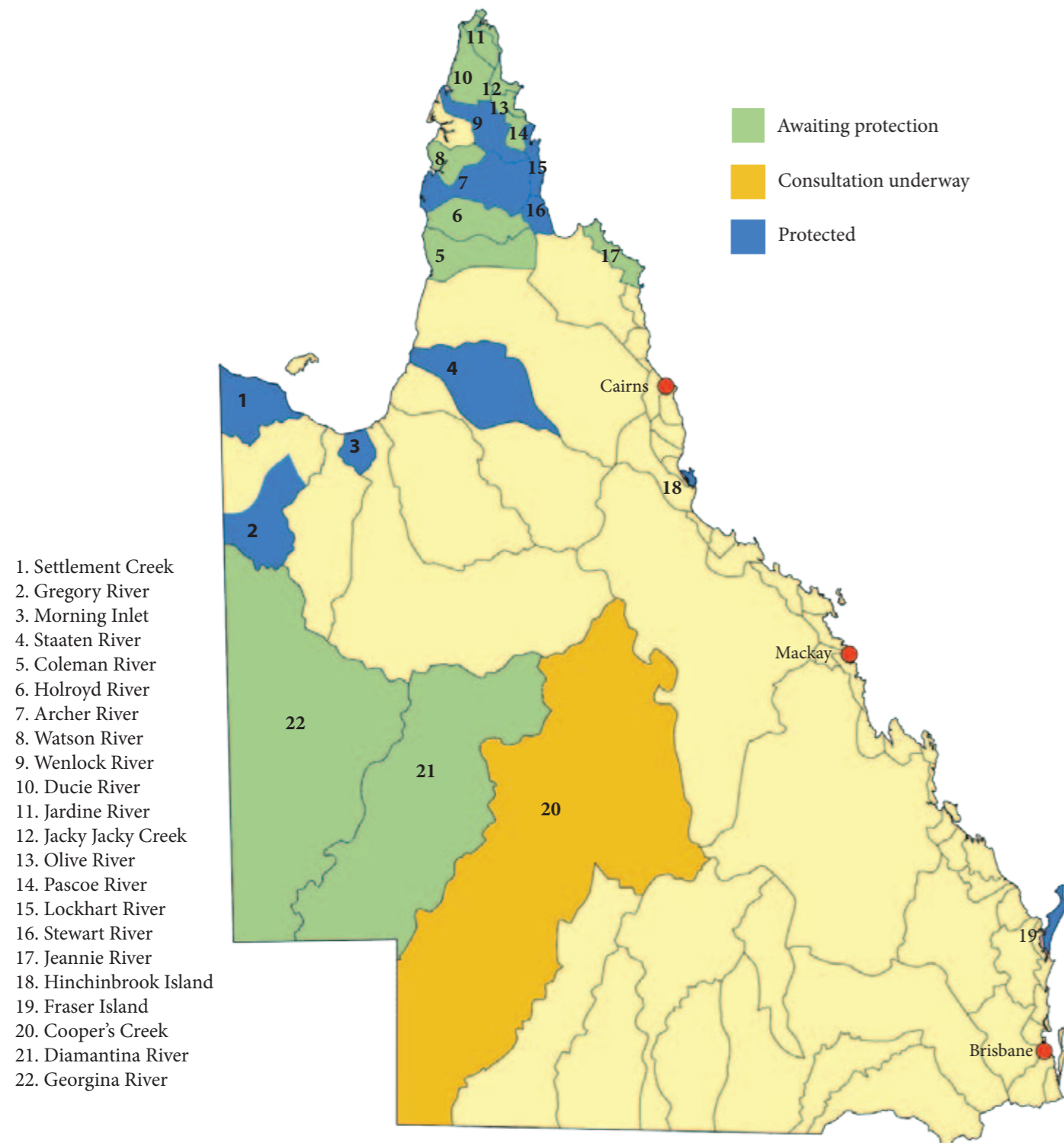
The Chuulangun outstation is here within the buffer zone. These sorts of buildings, including tourism lodges and residential, are allowed within the buffer zone, as are roads, fences, firebreaks and other important infrastructure.



(The Wild River declaration for the Wenlock River was made on the 4th June 2010)



Map of Declared and Proposed Wild River Areas



The 22 river systems so far promised for protection by the Queensland Government under the Wild Rivers initiative

Addressing the Misinformation about Wild Rivers

Misinformation	Facts
Wild Rivers stops the building of toilet blocks within 1km of a river	Toilet blocks can be built in a High Preservation Area – this claim is simply ludicrous.
Wild Rivers stops the building of tourism lodges	Wild Rivers does not stop the construction of buildings such as tourism lodges. Within the High Preservation Area, there is a requirement that such construction does not cause adverse erosion, effect water quality, or destroy wildlife corridors along the river. Typically this means building away from the high banks of the river.
Wild Rivers will lead to the banning of traditional hunting and fishing	There is no basis to this claim whatsoever. All Native Title rights are confirmed in the <i>Wild Rivers Act</i> , including the traditional rights to hunt and fish.
The Indigenous Wild River Rangers are “green welfare”	The Indigenous Wild Rivers Rangers are full-time waged positions run by local Indigenous service providers, creating real jobs, and are not part of any welfare program.
There has been no consultation with Indigenous people	Since 2004 there has been ongoing consultation with communities and Indigenous organisations about Wild Rivers, sometimes facilitated by Indigenous organisations. For example, the Balkanu Development Corporation, led by Gerhardt Pearson, received over \$60,000 from the Queensland Government to partner with them to run Indigenous consultations.
Wild Rivers stops market gardens	Market gardens are allowed in High Preservation Areas, including for commercial sale, so long as they don't exceed 4 hectares in size.
Wild Rivers is the same as a National Park	Wild Rivers is a planning scheme that applies to all land tenures – it does not change the tenure or ownership of the land. Unlike a National Park, activities such as grazing, fishing, sustainable enterprise and building private infrastructure occur under Wild River declarations.
Wild Rivers stops pastoralism	Wild Rivers does not stop pastoralism: water is still available for cattle, cattle dams can still be built away from rivers and cattle can still access rivers and waterholes. Many graziers support Wild Rivers as it ensures floodplains and rivers are healthy and productive.
Wild Rivers stops the aquaculture industry	Wild Rivers prevents aquaculture in the middle of a watercourse of wetland because of the high risk of pollution and contamination from this activity, but it is permitted outside of the High Preservation Area in lower risk, closed-tank systems.
Wild Rivers means more onerous “red tape”	Development in a Wild River area has to follow the normal planning process. That is, lodge a development application and await approval. This doesn't mean extra paper-work for the applicant – it means that local government, or the assessment manager, has to ensure that the application meets any Wild River requirements, along with other relevant state-wide building codes or planning regulations
Wild Rivers was a “sleazy” election deal in 2009	Based on ideas originating from the Australian Heritage Commission in the mid-1990s, the Labor Party in Queensland committed in 2004 to protecting free-flowing rivers. The <i>Wild Rivers Act</i> was enacted in 2005, and the Queensland government has now been to three elections with Wild Rivers policy commitments.
There are no threats to Cape York's rivers	Strip mining for bauxite and sand is a major threat to the health of Cape York's rivers. There is also a push for large-scale irrigation schemes. On top of this, invasive weeds, feral animals, changed fire regimes and climate change are major threats.
“Preservation areas” in a wild river area will lead to further restrictions	There has been no indication from the Queensland Government that any such changes would occur, nor any desire to unnecessarily tighten regulation in these areas.
Wild Rivers ignores Indigenous people's environmental stewardship	The Indigenous Wild River Ranger program is a direct recognition of the wealth of skills and knowledge held by local Indigenous people, who are now exercising their stewardship back on country, with huge benefits for the land, themselves and their families.

Environmental Regulation and Economic Development on Cape York Peninsula

Form of Development	Level of Regulation	Comments
Animal Husbandry		The effluent from this type of development (ie cattle feedlots or pig and poultry factories) is the major point of regulation, with permits granted through the <i>Sustainable Planning Act 2009</i> and the <i>Environmental Protection Act 1994</i> . In declared Wild River areas, these activities are not permitted within 500m – 1km of major watercourses or wetlands, unless they are within an urban zone.
Aquaculture		In declared Wild River areas, open aquaculture systems in major water courses are not permitted. However they are permitted in estuarine and coastal areas (with requirement relating to effluent control, health and quarantine), which is where CSIRO has identified as having the most potential for prawn aquaculture. Closed-ring tank aquaculture is permitted throughout Cape York, setback from major watercourses in Wild River areas (water reserves are available in Wild River areas to supply water for this type of activity). Location and supply chains are a major constraint to this industry, rather than regulatory control (see Kleinhart 2005).
Arts and Crafts		There are few regulatory constraints to this industry. It could be strongly argued that the industry is enhanced by the protection of natural and cultural resources.
Bush Foods and Medicines		There are few regulatory constraints to this industry, provided there is no excessive clearing of forests. It could be strongly argued that the industry is enhanced by the protection of natural and cultural resources.
Carbon Abatement (Fire Management)		This is an emerging economic development opportunity on Cape York Peninsula, with other Indigenous communities in the Northern Territory already earning a significant income from such projects. There are few regulatory constraints to fire management – the key hurdle to realising this opportunity is establishing a national carbon price, and clarifying complex tenure issues related to Traditional Ownership and realising broader carbon market opportunities.
Crocodile Farming		Under the <i>Cape York Peninsula Heritage Act 2007</i> , there is a scientific assessment process underway to examine the sustainability of harvesting Crocodile eggs in the community of Pormpuraaw.
Fishing (Commercial)		There are extensive commercial fishing operations in the Gulf of Carpentaria and the Torres Straight with regulatory oversight from the Federal and Queensland Governments (there are very few Marine Protected Areas in these marine waters). On the eastern side of Cape York Peninsula, marine waters are protected by the Great Barrier Reef Marine Park, however most of the zoning in this area allows for commercial fishing (with some conditions).
Irrigated Agriculture (Small-scale)		In declared Wild River areas, irrigated agriculture is not permitted within 500m – 1km of major watercourses and dams cannot be constructed. However for each declaration there is an Indigenous water reserve, plus there are special exemptions for small-scale tree clearing for Indigenous communities under the <i>Cape York Peninsula Heritage Act 2007</i> , which allows for small-scale, boutique irrigated development set back from major watercourses.
Irrigated Agriculture (Large-scale)		In declared Wild River areas, irrigated agriculture is not permitted within 500m – 1km of major watercourses and dams cannot be constructed. There is also little water available for large irrigation schemes, and large areas of forest cannot be cleared to allow for this development. Most importantly, there are significant ecological constraints. This includes low nutrient levels in soil, soils with high erodibility, low water availability (due to seasonality of flows), flooding threats, and acid sulfate soils (CSIRO 2009).
Market Gardens		The primary regulation relating to market gardens is within a High Preservation Area in a declared Wild River area, where 4 hectares is the maximum allowable size. This includes the ability to sell produce commercially. Any tree clearing for a market garden must also comply with the <i>Vegetation Management Act 1999</i> , though there are special clearing exemptions available for Indigenous communities under the <i>Cape York Peninsula Heritage Act 2007</i> .
Mining (Strip-mining)		In declared Wild River areas, new strip mining is not permitted within the 500m – 1km protective buffer zone around major watercourses, springs and wetlands (existing mining leases are exempt). Outside of these areas, however, strip mines are exempt from Queensland's tree clearing laws, so if the company demonstrates that it reaches the low bar set by the <i>Federal Environmental Protection and Biodiversity Conservation Act 1999</i> , the mine will invariably go ahead. In reality, given a range of significant exemptions and the fact that most mining occurs away from waterways and springs (with Cape Alumina being the exception here), there are few constraints to this industry beyond the protective buffers in a Wild River declaration.
Mining (Underground or Point-source)		There are few regulatory constraints to this industry, with the ability to mine underneath a High Preservation Area in a declared Wild River area (providing it can be demonstrated there will be no ground subsidence or impact on groundwater), and establish gas/ petroleum wells in this buffer zone, with a setback of 200m from watercourses. In addition, a company has to demonstrate that it reaches the low bar set by the <i>Federal Environmental Protection and Biodiversity Conservation Act 1999</i> .
Natural Resource Management		This is an emerging economic development opportunity on Cape York Peninsula, which includes Indigenous ranger programs and other environmental services. It could be strongly argued that the industry is enhanced by the protection of natural and cultural resources.
Native Forest Logging		Although some selective logging on freehold land is permitted (regulated in Queensland via the <i>Code Applying to a Native Forest Practice on Freehold Land</i>), overall there are reasonably tight controls around native forest logging. There are, however, moves to establish Indigenous timber salvaging operations on lands subject to future bauxite mining.
Pastoralism		There are few regulatory constraints to cattle grazing on Cape York Peninsula, other than permitting required for some infrastructure such as fences, roads, houses, etc (depending on level of impact). Broad-scale tree clearing is not permitted, however given the existing availability of native grasses, and past failures of tree clearing for cattle in the region, this is not seen as necessary for the industry. Feedlots are not allowed in the High Preservation Area of declared Wild River areas (there are currently no feedlots on Cape York Peninsula anyway). The <i>Cape York Peninsula Heritage Act 2007</i> provides for 75 year pastoral leases, if the owner opts into the "Area of International Significance".
Plantation Timber		Native vegetation cannot be cleared to establish new plantations, however there are special exemptions for small-scale tree clearing for Indigenous communities under the <i>Cape York Peninsula Heritage Act 2007</i> , which could allow for plantation establishment (with the caveat that the timber is not used for woodchip export). Regulation of plantations established on cleared land relate primarily to some control of agricultural chemicals.
Renewable Energy Infrastructure		Regulation for this type of infrastructure (wind farms, etc) relate to sensible requirements for vegetation clearing, a sensible setback from watercourses and reaching the low bar set by the <i>Federal Environmental Protection and Biodiversity Conservation Act 1999</i> .
Service Industries (Buildings)		There are few regulatory constraints to this industry, other than some sensible requirements relating to vegetation clearing, effluent control, and a sensible setback from watercourses.
Tourism (Building and Campsites)		There are few regulatory constraints to this industry, other than some sensible requirements relating to vegetation clearing, effluent control, and a sensible setback from watercourses. It could be strongly argued that the industry is enhanced by the protection of natural and cultural resources.

KEY: ■ Few regulatory constraints ■ Moderate regulatory constraints ■ Tight regulatory constraint

Cape York Peninsula Heritage Act 2007

The objects of the Heritage Act are:

- to identify significant natural and cultural values of Cape York Peninsula;
- to provide for cooperative management, protection and ecologically sustainable use of land, including pastoral land, in the Cape York Peninsula Region;
- to recognise the economic, social and cultural needs and aspirations of indigenous communities in relation to land use in the Cape York Peninsula Region; and
- to recognise the contribution of the pastoral industry in the Cape York Peninsula Region to the economy and land management in the region.

These objects are to be achieved primarily by providing for:

- the declaration of areas of international conservation significance;
- the cooperative involvement of landholders in the management of the natural and cultural values of Cape York Peninsula;
- the continuance of an environmentally sustainable pastoral industry as a form of land use in the Cape York Peninsula Region;
- the declaration of indigenous community use areas in which indigenous communities may undertake appropriate economic activities; and
- the establishment of committees to advise the environment Minister and vegetation needs management Minister about particular matters under this Act.

The Heritage Act led to amendments:

- to the *Vegetation Management Act 1999* concerning tree clearing for Indigenous communities;
- to the *Wild Rivers Act 2005* to clarify and confirm that the Act is not intended to affect native title;
- to the *Water Act 2000* to provide for specific Indigenous water reserves in declared Wild River areas; and
- to the *Nature Conservation Act 1992* regarding the creation of a model of National Park tenure and management on Cape York Peninsula founded in Aboriginal ownership of the land.



Press conference at tabling of the *Cape York Peninsula Heritage Bill*, 7th June, 2007. Next to then Premier Peter Beattie are Noel Pearson (left) and Lyndon Schneiders from The Wilderness Society (right). Also present are several Queensland Government Ministers and MPs, Gerhardt Pearson (Balkanu), Richie Ah Mat (Cape York Land Council), the Director-General of the Department of Premiers and Cabinet, Anthony Esposito (The Wilderness Society) and representatives of the Queensland Resources Council and AgForce.

Employment by Industry Cape York Peninsula 2006

	Indigenous		Non-Indigenous		Indigenous as % of total sector	Indigenous as % of total sector
	Persons	%	Persons	%		
Agriculture, forestry & fishing	89	4%	196	7%	30%	1.6%
Mining	19	1%	170	6%	10%	0.3%
Manufacturing	108	4%	563	19%	16%	2.0%
Electricity, gas, water & waste services	5	0%	27	1%	16%	0.1%
Construction	55	2%	241	8%	19%	1.0%
Wholesale trade	3	0%	30	1%	9%	0.1%
Retail trade	35	1%	235	8%	13%	0.6%
Accommodation & food services	26	1%	241	8%	10%	0.5%
Transport, postal & warehousing	11	0%	96	3%	10%	0.2%
Information media & telecommunications	4	0%	15	1%	21%	0.1%
Financial & insurance services	-	0%	12	0%	0%	0.0%
Rental, hiring & real estate services	-	0%	38	1%	0%	0.0%
Professional, scientific & technical services	16	1%	38	1%	30%	0.3%
Administrative & support services	43	2%	62	2%	41%	0.8%
Public administration & safety	1,475	58%	335	11%	81%	26.7%
Education & training	88	3%	259	9%	25%	1.6%
Health care & social assistance	280	11%	232	8%	55%	5.1%
Arts & recreation services	14	1%	25	1%	36%	0.3%
Other services	6	0%	76	3%	7%	0.1%
Inadequately described/Not stated	246	10%	80	3%	75%	4.5%
TOTAL	2,523	100%	2,971	100%		

Figures are for persons aged 15 years and over. Source: ABS 2006a.

Wild Rivers and Native Title

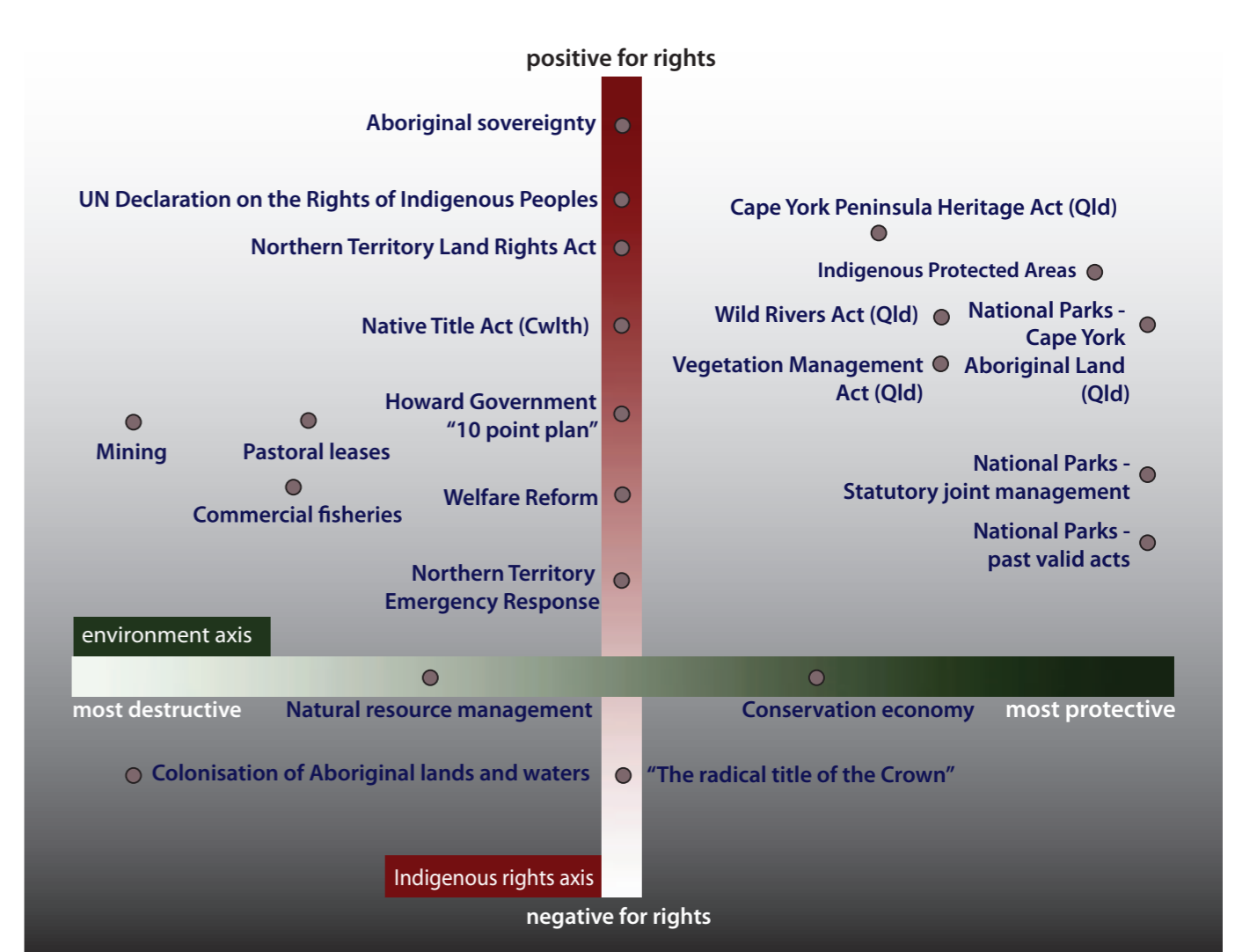
It is plainly the intent of the *Wild Rivers Act 2005* that it not affect Native Title. Section 44(2) of the *Wild Rivers Act 2005* is a clear statement that a Wild River declaration or the Wild Rivers Code as they apply for the purposes of an applicable Act, cannot affect Native Title.

The Explanatory Memorandum that accompanied these provisions when passed through the *Cape York Peninsula Heritage Act 2007*, describes the intention as being “to clarify that the wild rivers declaration or a Wild Rivers Code does not limit native title rights”.

If a Wild River declaration affects Native Title in a particular instance, then compliance with the *Native Title Act 1993* would be automatic and involve satisfying the procedural requirements set out in the *Native Title Act 1993* in relation to the relevant class of future act. Alternatively, it would entitle the Native Title holders to ignore any effect that a Wild River declaration or the Wild Rivers Code may have on that right under any of the other Acts. It would not invalidate a Wild River declaration.

There is no doubt an argument that Native Title rights should be extended to bring them more into conformity with the *UN Declaration on the Rights of Indigenous People*, but this is a matter for *Native Title Act 1993* reform.

Indigenous Rights and Environmental Protection Schema



This schema attempts to plot various policies and legislation on an Indigenous rights and conservation axes. The red, vertical axis represents Indigenous rights, with the top, dark red area as the positive. The green, horizontal axis represents environmental protection, with the right, dark green area as the most protective. Conceptualised by these two important important measures, the Wild Rivers initiative, along with other Queensland land use reforms, represent some of the most progressive policies, while destructive industries (that most often extinguish Native Title rights in a legal sense), are the most regressive.

Consequences if the Abbott Bill Passes

These are some of the likely adverse consequences if the Abbott Bill passes through Parliament:

- Undermine common law Native Title by shifting the balance of power for land use decisions away from Traditional Owners under Indigenous laws and customs, and to local and regional bodies corporate
- Affect the ability of the downstream communities to enjoy a healthy environment and design an economic future around a healthy river, if groups living upstream pursue unregulated development
- Expose presently healthy, free-flowing river systems to the most destructive forms of development
- Set a precedent for exemptions from planning and environmental laws on the grounds of race or property ownership
- Undermine the constitutional basis of tenure and land use decisions leading to legal challenges and the possibility of years of expensive and drawn-out litigation, prolonging conflict over Wild Rivers
- Jeopardise the employment for up to 100 Indigenous people in Wild River Ranger positions and cancel out the environmental benefits of the ranger program

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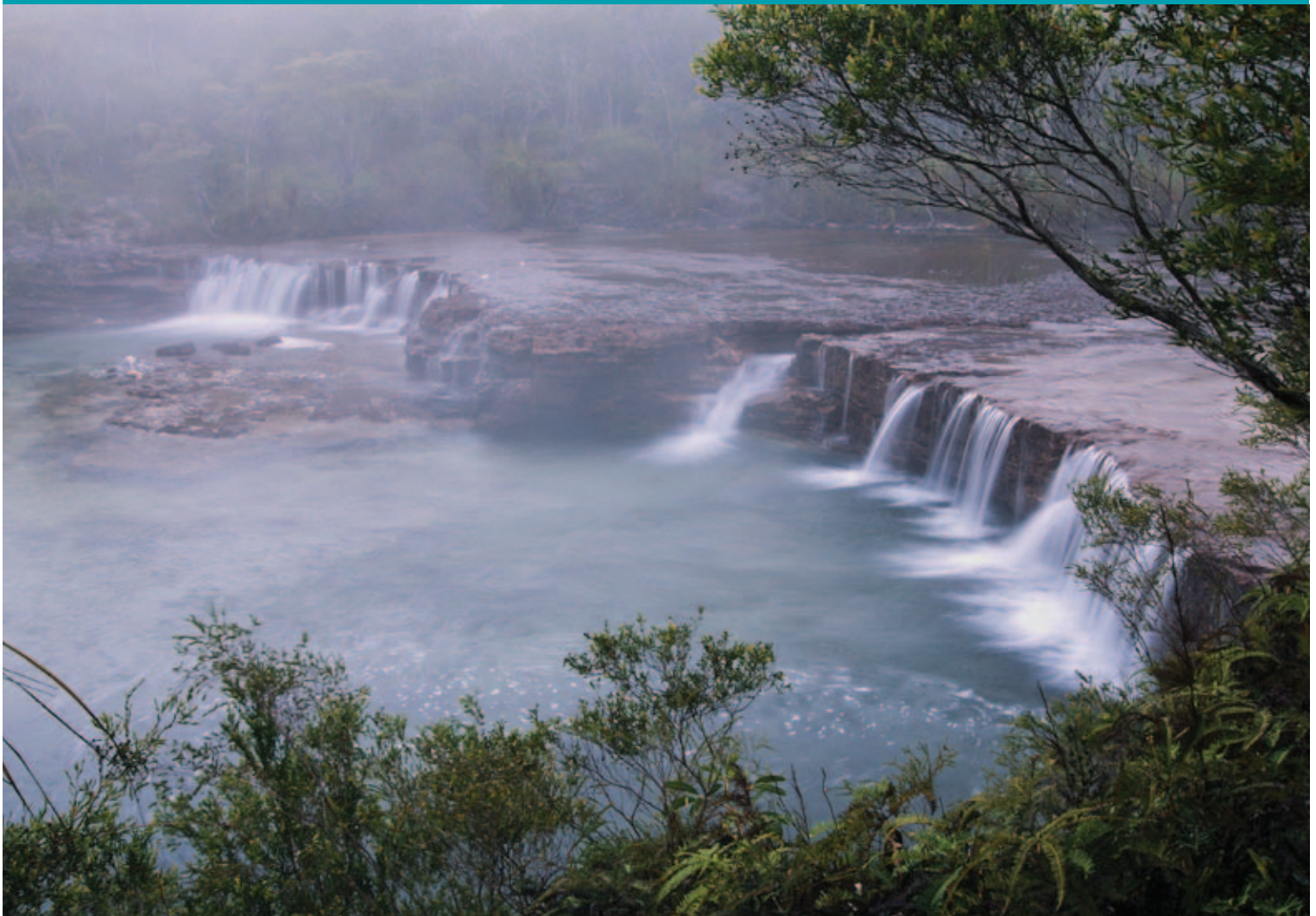


Protecting Rivers, Supporting Communities

A report series by The Wilderness Society for the House of Representatives Economics Committee's *Inquiry into issues affecting Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010*

Queensland's *Wild Rivers Act*

Report 2 of 6 – Feb 2011



Summary

This report provides background to the genesis of Queensland *Wild Rivers Act* and the surrounding national political debate, a simple explanation of how the legislation works, a repudiation of the misinformation about the initiative, and recommendations for improving the Wild Rivers initiative. A brief summary of each section in the report is as follows:

Queensland's Healthy Rivers: Queensland has some of the world's last healthy river systems, including in Cape York Peninsula, the Gulf Country, the Channel Country, the Paroo River, and some coastal streams.

Rivers Under Threat: Around the world and in Australia, there are few remaining healthy river systems. Of these, many are under threat by destructive and uncontrolled development, and poor land and water management. The story is the same for Queensland.

Development of the Wild Rivers Initiative: Queensland's *Wild Rivers Act* is part of a national water reform agenda to improve and maintain the health of our rivers. Passed in 2005 by the Beattie Labor Government with the support of the Liberal Party, there are now 10 river systems protected under the initiative, with another 12 identified for future protection. There are also 35 Indigenous Wild Rivers Rangers employed, with another 65 positions promised.

How Wild Rivers Works: The *Wild Rivers Act* is enabling legislation best described as a planning and management approach to river conservation. In practice it means that destructive forms of development such as strip-mining and polluting irrigation schemes have been set back from major watercourses and wetlands. Other activities such as pastoralism, construction of infrastructure and fishing continue throughout a declared wild river area.

Addressing the Misinformation about Wild Rivers: There has been a great deal of misinformation and misreporting about how the Wild Rivers initiative operates. For example claims that Wild Rivers stops market gardens, pastoralism, hunting and fishing, or the construction of tourism lodges, are false.

How this report relates to the Terms of Reference of the Inquiry

This report addresses the following components of the Terms of Reference:

- [The Committee should consider:] existing regulation, legislation in relation to mining and other relevant legislation including the *Wild Rivers Act* (Qld) 2005 and the *Environment Protection and Biodiversity Conservation Act 1999*
- [The inquiry should pay particular attention to the following:] The effectiveness of current State and Commonwealth mechanisms for appropriate preservation of free-flowing river systems which have much of their natural values intact, including the preserving of biodiversity
- [The inquiry should pay particular attention to the following:] Options for improving environmental regulation for such systems

Queensland's Healthy Rivers

Queensland is privileged to retain some of the world's last free-flowing, healthy rivers. Given the Australian Constitution vests core responsibilities for the management of land and water in the States, the Queensland Government has a crucial responsibility to protect these river systems for the benefit of all Australians.

Below is a quick snap-shot of where the remaining wild rivers are in Queensland, all of which have been identified on a national Wild and Natural Rivers database as part of a study undertaken by the Commonwealth Government in the 1990s (Department of the Environment and Heritage, Australia. 1998a and 1998b):

Cape York Peninsula: Cape York Peninsula is one of the last great wild places remaining on Earth, with some of the healthiest and most spectacular river systems on the planet (Mackey et al 2001). This includes rivers travelling through dense rainforest and flowing into the Great Barrier Reef, and others, fringed by gallery forests, weaving through hundreds of kilometres of savannah woodlands and forming huge wetlands before flowing into the Gulf of Carpentaria.

Gulf Country: Driven by the monsoonal wet-dry weather patterns of Northern Australia, the remote rivers of the Gulf Country traverse vast grasslands and savannah plains. In a big wet season, all of these rivers are connected at their mouths through the massive Southern Gulf Aggregation wetland system.

Coastal rivers: The vast majority of Queensland's eastern coastal river systems have been seriously degraded by agricultural, industrial and urban development. There are, however, a handful of rivers still free-flowing and relatively healthy: the Noosa River and Baffle River in South-East Queensland, and Sandy Creek and Daintree River in Far North Queensland. The streams and lakes of the World Heritage Fraser and Hinchinbrook islands are also still in a relatively pristine state.

Channel Country: These arid-zone rivers flow thousands of kilometres inland towards Australia's iconic outback lakes such as Lake Eyre. The rare major flooding events of these rivers about once a decade triggers a spectacular burst of life, particularly for migratory birds who travel thousand of kilometres to meet the floods. As the flood waters spread out across the outback landscape, they also bring life to grazing, fishing and tourism industries.

Murray-Darling Basin: The Paroo River is the last wild river in the whole of the Murray-Darling Basin. Free of dams and weirs and polluting irrigation schemes, this arid-zone river is known for its spectacular and healthy Ramsar-listed wetlands, which means their ecological importance is internationally recognised.

Rivers Under Threat

The Global Situation

Healthy river systems are crucial to life. They provide us with drinking water, food, recreation, pollution filtration, and many other services critical to all human societies. The fish, birds, plants and many other species that are part of a river system also have intrinsic values beyond direct human use or economic value.

“A major global study recently published in *Nature*, found that about 65% of the world's river systems are “highly threatened” from over-development ...”

But on a global scale, healthy river systems are increasingly rare, and those remaining face serious development and pollution threats. A major global study recently published in *Nature*, found that about 65% of the world's river systems are “highly threatened” from over-development, and that global efforts to reduce and manage these threats are limited (Vorosmarty et al 2010). For this reason many scientists agree that river systems are the most endangered ecosystems in the world – the loss of biodiversity in them is far greater than in most affected terrestrial ecosystems (see Sala et al 2000, Dudgeon et al 2006, Abell et al 2009).

Ecologists have grouped the major threats to the health of river systems into five major categories:

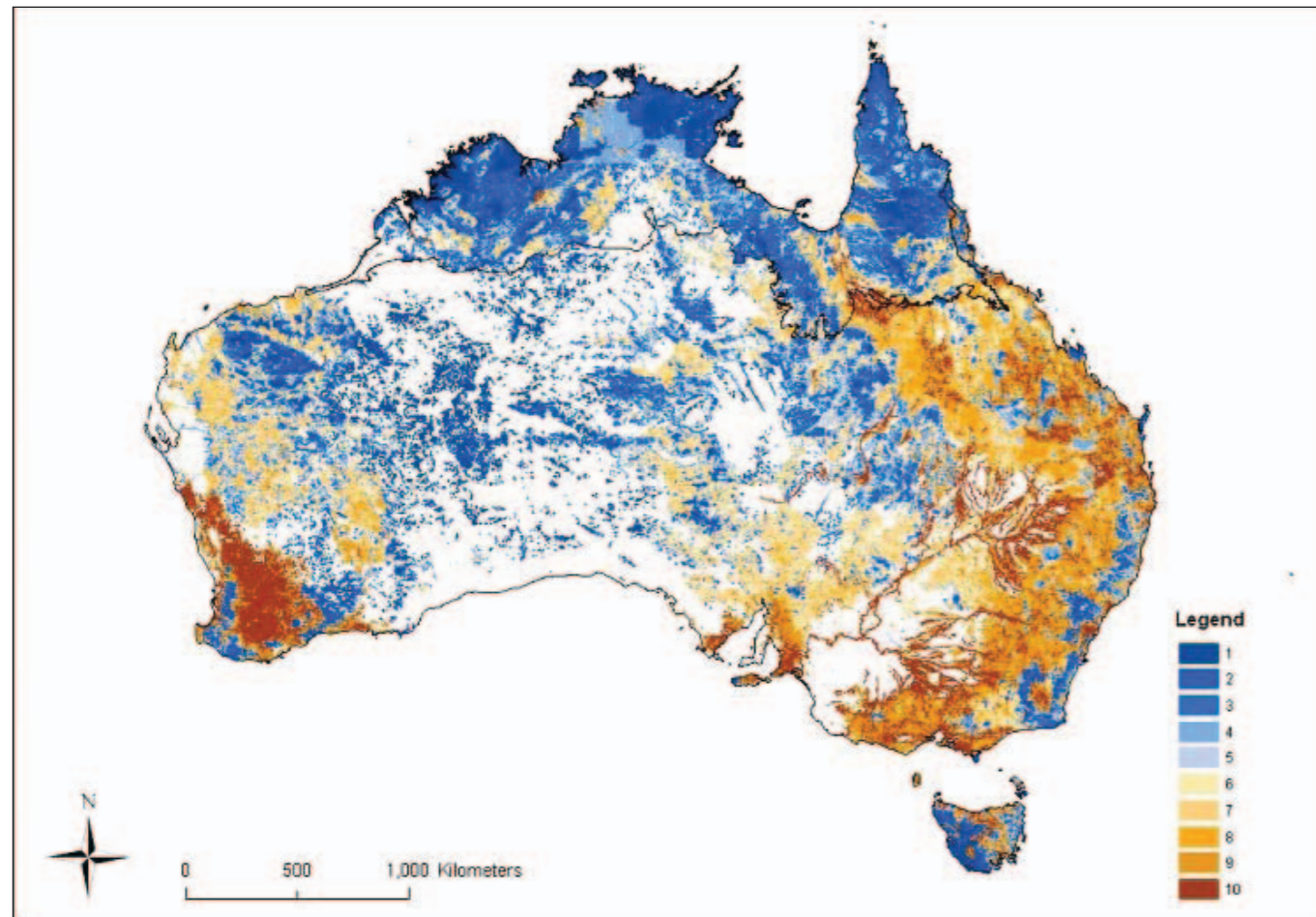
1. **Water pollution:** this includes agricultural runoff, and toxic chemicals or heavy metals from mining and urban areas.
2. **Habitat destruction and degradation:** river systems drain water from the surrounding landscape, so the clearing of land and destruction of natural forests, woodlands or grasslands directly impacts on their health.
3. **Flow modification:** this includes the impoundment of water in dams and weirs and complete alteration of the timing of natural flows down a river system, as well as the amount of water and its chemistry.
4. **Species invasion:** invasive weeds and other feral animals quickly capitalise in modified environments, further exacerbating native species decline.
5. **Overexploitation:** this includes over-fishing and uncontrolled exploitation of freshwater species. (Dudgeon et al 2006)

All of these factors are further compounded by climate change, which affects water availability and the timing of flow events.

The Australian Situation

Many of Australia's river systems are severely degraded (see Dunn 2000, Arthington and Pussey 2003, Kingsford et al 2005). The most prominent is the Murray-Darling Basin, which is at the centre of a major national debate about ways to restore the dying system. The solutions are complex, and require many billions of dollars – a key reminder of the social and economic consequences of river system destruction.

A major study conducted by the Commonwealth Government in 2000 showed that 26% of river basins in Australia were either close to, or overused, and 30% of Australia's groundwater management areas are either close to, or overused (National Land and Water Resources Audit 2000). Similarly, a follow-up study in 2002 showed that of the 14 000 river reaches assessed, 85% were classified as "significantly modified", nutrient and sediment loads were higher than normal in 90% and one third of aquatic plants and animals were "impaired" (National Land and Water Resources Audit 2002). These studies show, unequivocally, that we have pushed many of our river systems to the brink, jeopardising the survival of many native species, as well as our own life support systems.



Much of the damage to river systems has been concentrated on the eastern and southern coasts, the Murray-Darling Basin, and the Western Australian "wheat-belt". The rivers of central and northern Australia, and south-west Tasmania remain relatively intact in comparison. But this does not mean they are safe from the same development pressures that have so fundamentally destroyed other river systems.

For instance, in northern Australia, there has been a push to transform the region into the "food bowl of Asia". This is despite a recent taskforce and major CSIRO study demonstrating the serious natural constraints to this sort of development in the north, as well as the likely significant ecological impacts (Northern Australia Land and Water Taskforce 2009; CSIRO 2009).

One of the best ways to demonstrate our impact on river systems is graphically. This is the "River Disturbance Index" developed by Janet Stein initially for the Commonwealth Government's Wild Rivers Project (see Section 6). The red value of 10 shows the most disturbed river catchments and reaches, the blue value of 1 the least disturbed.

The Queensland Situation

The Queensland Government's *State of the Environment Queensland 2007* report showed that most of the State's rivers are still threatened by destructive development, and that we are losing wetlands at an alarming rate of 7,000 hectares per year. Combined with the dire global and Australia-wide situation of river system health, it is a compelling case for action.

To relate back to the regions of healthy river systems in Queensland:

- On Cape York Peninsula, there are ongoing pushes for large-scale irrigated agriculture. On top of this, extensive strip mining for bauxite, kaolin and sand on the west coast seriously threatens rivers and the connected wetlands.
- In the Channel Country in Western Queensland, irrigation and a rapidly expanding coal and gas mining industry threaten the health of the rivers.
- In the Gulf Country in the State's north and in the eastern coastal areas, rivers continue to be at risk from dam proposals for the expansion of large-scale irrigation and industrial water use.

All of these river systems are also affected by invasive weeds, feral animals, poor stock management and inappropriate fire regimes. Indigenous people and land managers, with local knowledge and skills, are best placed to manage these threats, but need greater support from Federal and State Governments.

Bauxite mine threat to Wenlock River

The Wenlock River on Cape York Peninsula is one of Australia's last great wild rivers. Home to the richest diversity of freshwater fish species in the country, the Wenlock provides critical crocodile habitat, and is also of immense cultural importance to local Indigenous people.

The spectacular Steve Irwin Wildlife Reserve, established as a tribute to the Crocodile Hunter, encompasses part of the Wenlock River and protects important springs and headwaters of the river.

However, the Wenlock River and Steve Irwin Wildlife Reserve are under serious threat from a damaging bauxite mining proposal.

Cape Alumina wants to build a new mine right on the Wildlife Reserve. If allowed to go ahead, this will destroy forests, cause erosion and wipe out wildlife habitat. Unique rainforest springs will also be seriously threatened by modified water flows, while plans to extract millions of litres of water from the river could reduce river flows in dry times to critical levels.

Development of the Wild Rivers Initiative

The Roots of the Wild Rivers Initiative

The United States' *Wild and Scenic Rivers Act* 1968 could be considered the early precursor and inspiration for Queensland's Wild Rivers initiative. Created in response to escalating public concern about the rapid decline of river health, the Act restricts the federal government from introducing dams, mining, irrigation, and other development projects on listed river systems. But while the degradation of Australia's river systems has been just as severe as in the U.S., we have taken much longer to develop effective stand-alone legislation to protect river systems.

"... it wasn't until the early 1990s that public awareness of the plight of our river systems spiked, and governments were compelled to do something drastically different"

In fact it wasn't until the early 1990s that public awareness of the plight of our river systems spiked, and governments were compelled to do something drastically different. This was due largely to the very graphic images of a the disastrous algal bloom of the Darling River in 1991 – the biggest in the world spanning over 1000 kilometers – that so effectively communicated a problem, combined with acknowledgement of equally pressing issues with salinity and decline of aquatic species in the Murray-Darling Basin and other stressed systems.

One major response to this crisis was a major overhaul of the Australian water industry. The initial step was the signing of a water reform agreement at the 1994 Council of Australian Government's (COAG) meeting, which set out a framework for dramatically changing the way water licenses are allocated, and factoring in the environment as a key consideration for water planning.

In 2003, COAG agreed to refresh and expand this agreement by signing the *National Water Initiative*. Of direct relevance to Queensland's Wild Rivers initiative, the new agreement explicitly outlined the need to protect and manage high conservation value aquatic ecosystems (section 25(x)), providing impetus for a stand alone legislative framework to protect healthy rivers.

The other key response in the early 1990s was the initiation of the *Wild Rivers Project* by the Australian Heritage Commission (AHC), which in 1992 was tasked with identifying Australian rivers in near-pristine condition and encouraging their protection and proper management. The AHC completed the *Wild Rivers Project* in 1998, culminating in the reports *The Identification of Wild Rivers and Conservation Guidelines for the Management of Wild River Values* (Department of the Environment and Heritage, Australia. 1998a and 1998b). However, no immediate action was taken by any government following the release of the reports.

A Campaign for River Protection

Ironically, the commencement of the water reform period in the 1990s coincided with a dramatic acceleration in water resource extraction and development. In Queensland, this included the surging growth of the infamous and gigantic Cubbie Station cotton farm, pushes for cotton in the Cooper Creek, the Gulf Country and Cape York Peninsula, and a massive dam building agenda across Queensland outlined by the Borbidge National Party Government in their *Water Infrastructure Task Force* report of 1997.

"These escalating pressures convinced The Wilderness Society and other conservationists that the national water reform process on its own was simply not enough to prevent the irreversible destruction of our river systems"

These escalating pressures convinced The Wilderness Society and other conservationists that the national water reform process on its own was simply not enough to prevent the irreversible destruction of our river systems. There were too many ad hoc, highly destructive water development proposals being pushed throughout the State, and it was becoming increasingly difficult to ensure the protection of Queensland's rivers. So conservation groups in 2000 began advocating for sensible regulation in the form of specific river protection legislation – a *Wild Rivers Act*.

In the midst of the 2004 State election campaign, the ALP responded to this campaign, and publicly announced a commitment to introduce legislation to protect wild rivers, including a list of 19 river basins identified for protection. The policy commitment effectively embraced many of the management principles as developed by the AHC's *Wild Rivers Project*, including the regulation of destructive forms of development in and near healthy waterways and wetlands, and controlling the use of invasive weeds and pest fishes.

Following a phase of public consultation that included conservation, Indigenous, agricultural and mining interests, the Queensland Government passed the *Wild Rivers Act* in 2005, with the support of the Queensland Liberal Party (while the National Party abstained). It was a highly significant step, and signalled a major breakthrough in the proactive protection of Queensland's healthy river systems.

Implementation of the Wild Rivers Initiative

Three months after the passage of the *Wild Rivers Act*, the first six wild river basins were nominated for protection: Settlement Creek, Gregory River, Morning Inlet, Staaten River (these four being in the Gulf of Carpentaria), Hinchinbrook Island and Fraser Island. While Traditional Owners in the Gulf of Carpentaria responded positively to the move, AgForce, the Queensland Resources Council, and Noel Pearson reacted furiously, prompting the Queensland Government to forcefully encourage all stakeholders to negotiate a workable way forward to enable the first round of declarations to occur.

"Strongly backed by *The Australian* newspaper, Pearson waged an unrelenting media campaign, centred on the false claim that Wild Rivers would stop economic development"

A settlement was reached and amendments made to the *Wild Rivers Act*, which effectively watered down provisions concerning mining exploration and agriculture, however it allowed the declarations to proceed in February 2007.

As the Queensland Government moved to begin the consultation process for protection of the 13 identified river basins on Cape York Peninsula, Noel Pearson stepped up his campaign against the initiative (despite being part of the negotiated amendments to the *Wild Rivers Act*). At a pivotal meeting on Cape York Peninsula hosted by AgForce, Noel Pearson declared that:

"*The way [Wild Rivers] will work out is that indigenous people will die on welfare. No prospect for development, no prospect of jobs, no prospect of even developing the lands that they already have ... So we have got to have a full frontal attack on this legislation ...*" (Noel Pearson 2006).

Strongly backed by *The Australian* newspaper, Pearson waged an unrelenting media campaign, centred on the false claim that Wild Rivers would stop economic development. Premier Beattie responded once again by initiating a negotiation process, this time designed to settle the broader question of land use and sustainability on Cape York Peninsula.

The process, which included The Wilderness Society, the Australian Conservation Foundation, the Cape York Land Council, the Balkanu Development Corporation, the Cook Shire Council, AgForce and the Queensland Resources Council, culminated in the Cape York Peninsula Heritage Act 2007.

The Act included an assurance of an Indigenous water reserve for any Wild River declaration, explicit protection of Native Title rights in any Wild River declaration, special tree-clearing exemptions for Indigenous communities, a process to progress a World Heritage listing for the region, and a new class of Aboriginal National Park.

While the agreement was hailed by all parties, including Noel Pearson, it lasted just one month. In the heat of the Federal Election, Pearson accused the Queensland Government, Kevin Rudd, The Wilderness Society and the Greens of secretly including bigger areas in the Wild Rivers scheme on Cape York through a "preference deal" (Koch 2007) – a claim with no basis in reality.

Despite the ongoing campaign from Pearson and others, the Queensland Government proceeded with the terms of the agreement, and after a lengthy public consultation process declared the first three river basins on Cape York Peninsula in April 2009 (the Stewart, Lockhart and Archer Rivers) and the Wenlock River in June 2010. The latter declaration included the protection of rainforest springs on the Steve Irwin Wildlife Reserve from Cape Alumina's proposed bauxite mine, who have announced that their project is no longer viable because of the 500m buffers around the springs.

While there remain 9 river basins on Cape York Peninsula still identified for protection, the Queensland Government has also begun to deliver on their 2009 state election promise of including the Lake Eyre Basin river systems of Queensland in the Wild Rivers scheme. In November 2010, further amendments to the *Wild Rivers Act* were passed in Queensland Parliament aimed at incorporating these river systems into the framework. The Cooper Creek nomination was released for public consultation in December 2010.

The Wild Rivers initiative is now operating in a highly politicised space, with Federal Opposition Tony Abbott determined, in his words, to "overturn" the Queensland legislation. This Parliamentary Inquiry into Indigenous economic development, including the operation of Wild Rivers, is a result of the overblown rhetoric of the anti Wild Rivers campaign.

Indigenous Wild River Ranger Program

From the outset of the development of the *Wild Rivers Act* in 2004, The Wilderness Society has consistently called for strong support and resources to be given to local communities to manage declared Wild River areas. In the 2006 Queensland state election, the Beattie Government responded by committing to create a program of Indigenous Wild River Rangers, with the aim of eventually employing 100 Indigenous people.

“To date the program has been a huge success, with 35 rangers now employed across Far North Queensland”

To date the program has been a huge success, with 35 rangers now employed across Far North Queensland. The program is based on a community development model – whereby community organisations are funded and resourced to run their own ranger programs, rather than via a direct, Government-controlled program. Not only are the rangers performing a vital environmental service for all Australians through their management of invasive weeds, feral animals and fire, but the program is performing an important social role by providing full-time employment and a beacon of pride for local communities.

Premier Anna Bligh recently announced that the ranger positions are now permanent and will be treated with the same security as public service jobs. This means the Indigenous people employed through the program can more readily access capital for homes and other basic needs most Australians already enjoy.

Key Wild Rivers Events

1994 - Feb: COAG Water Reform agreement signed

1998 - June: Federal Government's *Wild Rivers Project* completed

2003 - Aug: National Water Initiative agreement signed

2004 - Jan: Beattie Government promises to introduce *Wild Rivers Act*

2005 - Sept: *Wild Rivers Act* passed in Queensland Parliament, with support of Liberal Party

2006 - June: Noel Pearson launches campaign against Wild Rivers

2006 - Sept: Queensland Government promises to employ 100 Indigenous Wild River Rangers

2007 - Feb: First six Wild Rivers declared

2007 - Oct: *Cape York Peninsula Heritage Act* passed, with agreement to proceed with Wild Rivers

2009 - March: Bligh Government promises to include Lake Eyre Basin rivers in Wild Rivers scheme

2009 - April: Three Wild Rivers declared on Cape York Peninsula

2010 - Feb: Opposition Leader Tony Abbott introduces Bill to override *Wild Rivers Act*

2010 - June: Wenlock River declared on Cape York Peninsula

2010 - Nov: Post Federal Election, Tony Abbott re-introduces Bill to override *Wild Rivers Act*

2010 - Nov: Amendments to *Wild Rivers Act* passed, to incorporate Lake Eyre Basin rivers

2010 - Dec: Draft Cooper Creek Wild River declaration released for consultation

See Appendix A for a detailed timeline on Wild Rivers

How Wild Rivers Works

The Mechanics of the *Wild Rivers Act*

The *Wild Rivers Act* is enabling legislation best described as a planning and management approach to river conservation. It operates in tandem with Queensland's Sustainable Planning Act 2009, Water Act 2000 and other relevant Queensland legislation to regulate new developments in declared “wild river areas”, setting a baseline for ecologically sustainable development that protects wild river values.

The following excerpt from the *Wild Rivers Code*, which is used to assess development in a wild river area, is a good explanation of how Wild Rivers operates.

“The Queensland Government can declare a wild river area under the *Wild Rivers Act* in order to preserve the natural values of that river system. Once a wild river area is declared, certain types of new development and other activities within the river, its major tributaries and catchment area will be prohibited, while other types must be assessed against this code. Each wild river declaration will identify these developments and other activities. Also proposed developments and activities assessed against this code must comply with its requirements.

The natural values to be preserved through a wild river declaration are:

- hydrological processes
- geomorphic processes
- water quality
- riparian function
- wildlife corridors “

Proposed development activities are assessed for their potential impact on these natural values.”

In order to give more definition for this assessment process, a declared Wild River area (defined by a river basin) is mapped into different management areas, which have varying rules to guide development activities in the *Wild Rivers Code*.

The simplified diagram on the next page provides further explanation of how these management areas work, and other key features of the initiative.

Consultation and Negotiation

A Wild River declaration cannot occur without extensive community consultation, including a public submission phase. The formal consultation process is triggered when the Government releases a draft declaration proposal (termed a “nomination”). This includes releasing a draft map showing proposed management areas, and is followed by months of face-to-face meetings between the Government and communities, sectoral groups, and industry organisations, as well as a chance for people to lodge submissions with the Government.

There is also the opportunity for parties to seek to negotiate directly with the Government following the close of submissions. This was applied in the Gulf of Carpentaria, where a number of stakeholder groups worked with the Government to develop a final outcome for the declarations, after the submission period had closed.

“A Wild River declaration cannot occur without extensive community consultation, including a public submission phase”

The final decisions on a declaration are then made at the discretion of the relevant Queensland Minister endorsed by Queensland Cabinet, signed off by the Queensland Governor and tabled in State Parliament.

To date, there has also been a lot of negotiation and consultation outside of this formal process. For instance, the three rivers declared on the Cape in April 2009 involved more than three years of ongoing consultation by the Queensland Government with conservation groups and regional Indigenous organisations, resulting in amendments to the *Wild Rivers Act* and development of the *Cape York Peninsula Heritage Act 2007*.

How does Wild Rivers work? - The Wenlock River example

Mining Exclusion:

This is the 'Coolibah Springs' area on the Steve Irwin Wildlife Reserve, where Cape Alumina wants to strip mine for bauxite. The 500m buffer zone here has excluded mining from this sensitive area.

Floodplain Management Area:

Within this area the construction of levees and flow-impeding development is regulated to ensure connectivity between this area and the main river channel

Native Title:

Native Title rights are formally protected under the Wild Rivers Act. A Wild River declaration does not affect land tenure.

Water Extraction:

Water extraction is capped at a sustainable level of no more than 1% of mean annual discharge. Within this cap, a special water reserve is made for Indigenous economic use.

Land Management:

There are 6 Indigenous Wild River Rangers working within the Wenlock River catchment, addressing problems of invasive weeds, feral animals and fire management. In total there are 40 Indigenous rangers as part of this program, with another 60 promised by the Bligh Government.

Buffer Zones:

These orange areas are the main feature of a Wild River declaration - the buffer zone around the most important rivers, lakes, wetlands and springs. The buffer here is 1km either side of the river. Within these areas, strip mining, intensive irrigation and dams are not allowed. Pastoralism, fishing, buildings, and other lower impact activities are still allowed in this zone.

Nominated Waterways:

Some development has to be setback a reasonable distance from these smaller tributaries, including clearing for mines, and aquaculture.

Preservation Area:

Encompassing over 80% of most declared Wild River areas, within this zone mining, agriculture, aquaculture, and other intensive development is allowed. The Wild Rivers Code sets some benchmarks for these activities, on top of existing environmental regulations.

Buildings and Outstations:

The Chuulangun outstation is here within the buffer zone. These sorts of buildings, including tourism lodges and residential, are allowed within the buffer zone, as are roads, fences, firebreaks and other important infrastructure.



(The Wild River declaration for the Wenlock River was made on the 4th June 2010)

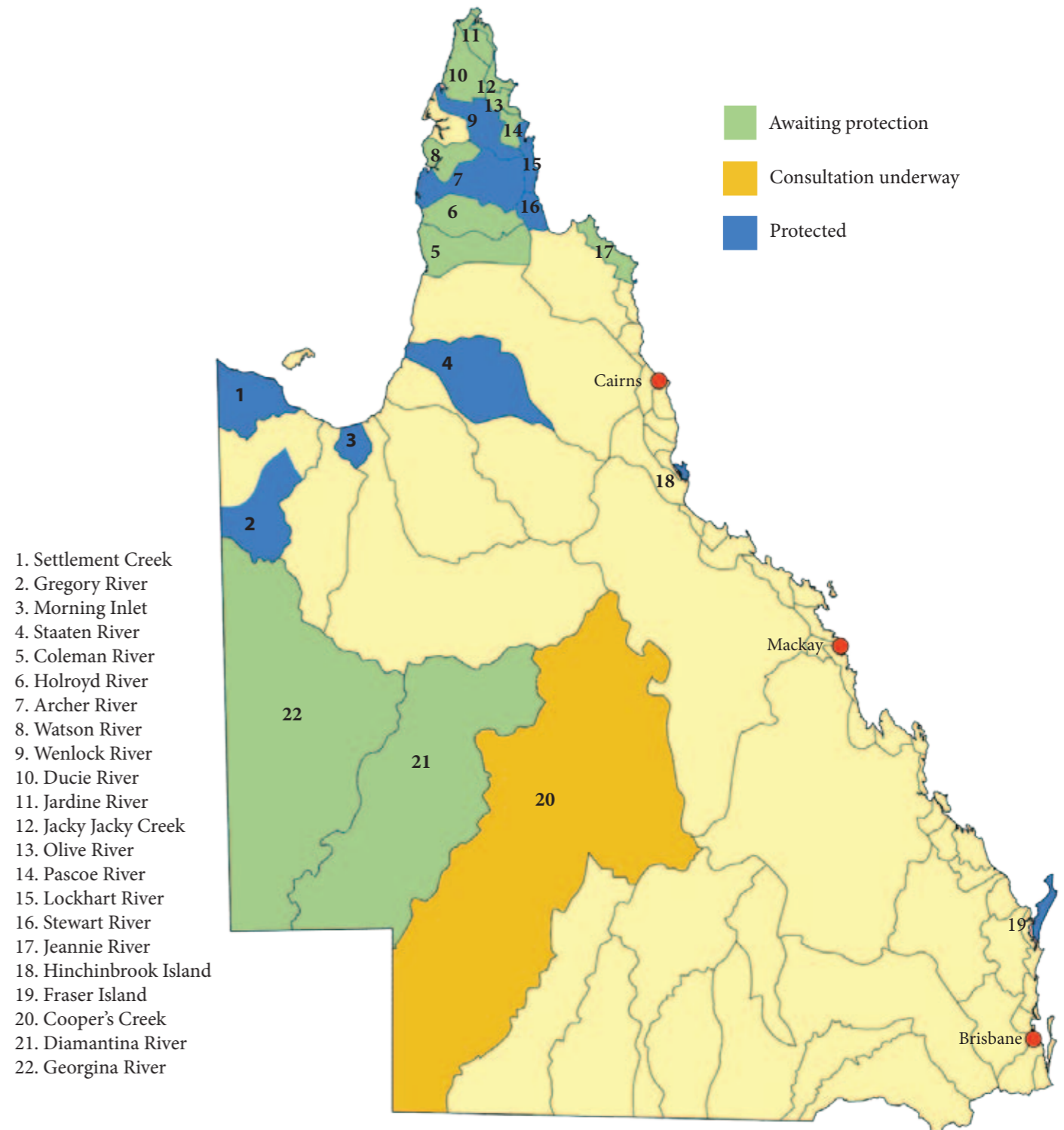


Addressing the Misinformation About Wild Rivers

Since the proclamation of the *Wild Rivers Act*, there has been a great deal of misinformation and misreporting about how the initiative operates. The following table provides a response to these claims.

Misinformation	Facts
Wild Rivers stops the building of toilet blocks within 1km of a river	Toilet blocks can be built in a High Preservation Area – this claim is simply ludicrous.
Wild Rivers stops the building of tourism lodges	Wild Rivers does not stop the construction of buildings such as tourism lodges. Within the High Preservation Area, there is a requirement that such construction does not cause adverse erosion, effect water quality, or destroy wildlife corridors along the river. Typically this means building away from the high banks of the river.
Wild Rivers will lead to the banning of traditional hunting and fishing	There is no basis to this claim whatsoever. All Native Title rights are confirmed in the <i>Wild Rivers Act</i> , including the traditional rights to hunt and fish.
The Indigenous Wild River Rangers are “green welfare”	The Indigenous Wild Rivers Rangers are full-time waged positions run by local Indigenous service providers, creating real jobs, and are not part of any welfare program.
There has been no consultation with Indigenous people	Since 2004 there has been ongoing consultation with communities and Indigenous organisations about Wild Rivers, sometimes facilitated by Indigenous organisations. For example, the Balkanu Development Corporation, led by Gerhardt Pearson, received over \$60,000 from the Queensland Government to partner with them to run Indigenous consultations.
Wild Rivers stops market gardens	Market gardens are allowed in High Preservation Areas, including for commercial sale, so long as they don’t exceed 4 hectares in size.
Wild Rivers is the same as a National Park	Wild Rivers is a planning scheme that applies to all land tenures – it does not change the tenure or ownership of the land. Unlike a National Park, activities such as grazing, fishing, sustainable enterprise and building private infrastructure occur under Wild River declarations.
Wild Rivers stops pastoralism	Wild Rivers does not stop pastoralism: water is still available for cattle, cattle dams can still be built away from rivers and cattle can still access rivers and waterholes. Many graziers support Wild Rivers as it ensures floodplains and rivers are healthy and productive.
Wild Rivers stops the aquaculture industry	Wild Rivers prevents aquaculture in the middle of a watercourse of wetland because of the high risk of pollution and contamination from this activity, but it is permitted outside of the High Preservation Area in lower risk, closed-tank systems.
Wild Rivers means more onerous “red tape”	Development in a Wild River area has to follow the normal planning process. That is, lodge a development application and await approval. This doesn’t mean extra paper-work for the applicant – it means that local government, or the assessment manager, has to ensure that the application meets any Wild River requirements, along with other relevant state-wide building codes or planning regulations
Wild Rivers was a “sleazy” election deal in 2009	Based on ideas originating from the Australian Heritage Commission in the mid-1990s, the Labor Party in Queensland committed in 2004 to protecting free-flowing rivers. The <i>Wild Rivers Act</i> was enacted in 2005, and the Queensland government has now been to three elections with Wild Rivers policy commitments.
There are no threats to Cape York’s rivers	Strip mining for bauxite and sand is a major threat to the health of Cape York’s rivers. There is also a push for large-scale irrigation schemes. On top of this, invasive weeds, feral animals, changed fire regimes and climate change are major threats.
“Preservation areas” in a wild river area will lead to further restrictions	There has been no indication from the Queensland Government that any such changes would occur, nor any desire to unnecessarily tighten regulation in these areas.
Wild Rivers ignores Indigenous people’s environmental stewardship	The Indigenous Wild River Ranger program is a direct recognition of the wealth of skills and knowledge held by local Indigenous people, who are now exercising their stewardship back on country, with huge benefits for the land, themselves and their families.

Map of Declared and Proposed Wild River Areas



The 22 river systems so far promised for protection by the Queensland Government under the Wild Rivers initiative

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Appendix A

Timeline of the Wild River Initiative

(Note: This timeline attempts to capture major events in the history of Queensland’s Wild Rivers initiative. It does not include the many meetings between The Wilderness Society and other stakeholders outside of Government processes, which includes engagement with Traditional Owner groups.)

1992 (Dec) Minister Paul Keating’s Statement on the Environment includes a commitment to identify Australian rivers in near-pristine condition and to encourage their protection and proper management. The Australian Heritage Commission is tasked with this role, and establishes the Wild Rivers Project (initially called the Near-pristine Rivers Project).

1994 (Feb) The Council of Australian Governments meets and agrees on a national agenda for water reform. This is triggered by escalating and severe problems with river health. A significant component of the reform agenda involves legal recognition and protection of natural ecosystems.

1996 (Oct) Graziers, conservationists, and scientists unite to reject plans for new cotton development in the free-flowing Cooper Creek catchment. The campaign includes a call for the long-term protection of the river system at a special conference in Windorah.

1997 (Feb) Queensland’s National Party Government releases the Water Infrastructure Task Force report, which identifies and priorities over 80 dam proposals throughout Queensland. This combined with the rapid expansion of the Cubbie Station cotton farm in South-West Queensland seriously alarms conservationists. Environment groups are increasingly focusing on improving water resource management and ensuring the protection of Queensland’s river systems.

1998 (June) The Australian Heritage Commission’s Wild Rivers Project is completed, culminating in the reports The Identification of Wild Rivers and Conservation Guidelines for the Management of Wild River Values. These reports later form the basis for the development of Queensland *Wild Rivers Act* 2005.

2000 (Feb) The Cooper Creek Water Resource Plan is released by the Queensland Government – it includes a moratorium on future water allocation licenses, which effectively stops cotton and other development for the life of the plan (ie 10 years).

2000 (Oct) Queensland Parliament passes the *Water Act* 2000 (replacing the Water Resources Act 1989), which seeks to reform water management in the state. Conservation groups strongly advocate for parallel, stand alone legislation to protect the conservation values of rivers, including free flowing rivers. This was in recognition that the *Water Act* focussed on water allocation and use but did not specifically address conservation issues nor provide a sensible and effective regulatory framework to protect Queensland’s remaining free flowing rivers.

Early 2000s The Wilderness Society and the Queensland Conservation Council begin publicly advocating for stand-alone legislation to protect Queensland’s remaining free-flowing rivers. The ideas for river management and protection for the campaign were based on some of the Australian Heritage Commission’s work and management ideas through the Wild Rivers Project, and drew on the aspects of the US Wild and Scenic Rivers Act and Canadian Heritage River System. The primary focus of the campaign begins with the Paroo River – the last free-flowing river of the Murray-Darling Basin.

2000 (mid) Queensland Environmental Protection Agency and other Queensland Government departments commence the development of a framework for a State Rivers Policy, which includes an assessment of Queensland’s wild rivers at the basin level, drawing on information produced by the Australian Heritage Commission’s Wild Rivers Project, and a recommendation to develop a regulatory framework to protect river systems according to three “categories” of river health.

2001 (Aug) The Cotton Cooperative Research Centre releases a report which identifies 21 priority areas for cotton development in Northern Australia. This includes proposals on healthy and undeveloped rivers, including the Kendal, Holroyd, Edward, Archer, Wenlock, Colman and Watson rivers on Cape York, as well as the Mitchell and Gregory rivers in the Gulf of Carpentaria. Conservation groups across Northern Australia, including The Wilderness Society, campaign to oppose the expansion of cotton development, which includes a central call for

legislative protection of free-flowing rivers.

2003 (July) On the back of a public campaign by a coalition of scientists, landholders and conservation groups, including The Wilderness Society, The New South Wales and Queensland Government’s sign the Intergovernment Agreement for the Paroo River, to ensure the sustainable ecological management of the last free flowing river system in the Murray Darling Basin, including a moratorium on new water licenses. Many of the principles in the agreement are later incorporated in the *Wild Rivers Act* 2005 (though the Paroo is not yet protected by the legislation).

2003 (Aug) Queensland signs the National Water Initiative, which refreshes the 1994 Council of Australian Governments water reform agenda by compelling Australian governments to improve water and river management, and to protect high conservation value aquatic ecosystems. This provides further strong impetus for Queensland to go beyond the *Water Act* 2000 and adopt the Wild Rivers framework.

2004 (Jan) Queensland ALP makes an election commitment to create stand-alone Wild Rivers legislation and proposes an initial 19 river basins across Queensland for [protection. The policy commitment states, among other things, that: “We will not allow dams to be built on Queensland’s wild rivers. Our wild rivers will run free”.

2004 (Feb) Beattie Government is re-elected in Queensland.

2004 (Aug) The Wilderness Society embarks on a community engagement tour in the Gulf of Carpentaria with Cooper Creek grazier Bob Morrish, championing the protection of wild rivers and the risks of cotton and other irrigated development on free-flowing rivers.

2004 (Oct) The Wilderness Society, the Queensland Conservation Council and the Environmental Defender’s Office produce an initial policy position on the proposed *Wild Rivers Act*. The paper includes a call for a “three tier” system of river classification; a significant funding package for ongoing management of rivers and employment of local people; and the formal protection of Native Title rights and Traditional Ownership and management, protection of Indigenous cultural heritage and ensuring consultation rights for Indigenous people.

2004 (Dec) The Wilderness Society and the Queensland Conservation Council produce a discussion paper Caring for Queensland’s Wild Rivers – Indigenous rights and interests in the proposed *Wild Rivers Act*. The discussion paper is aimed at ensuring Indigenous rights are recognised in the new Act. It is mailed out to over 150 Native Title representative bodies and Indigenous organisations throughout the State, and followed up by a series of meetings, including between The Wilderness Society and the Cape York Land Council, and Balkanu Cape York Development Corporation.

2005 (March) Queensland Government releases the draft Wild Rivers Bill 2005 for consultation with stakeholders ahead of its introduction into Parliament. The Bill adopts key aspects of the Commonwealth Government’s Wild Rivers Project.

2005 (April) A coalition of Queensland conservation groups (including The Wilderness Society) submit a response to the draft Bill. The submission emphasises the need for Wild Rivers to include a funding package for river management, the option for public nomination of rivers, and the formal protection of Native Title rights.

2005 (May) Queensland Government introduces the Wild Rivers Bill 2005 into Parliament for debate. The Wilderness Society and other conservation groups welcome the Bill but criticise the Queensland Government for failing to provide adequate funding to actively manage the rivers (conservation groups advocated for a \$60 million management fund).

2005 (June) The Northern Territory Government follows the lead of Queensland, and commits to introducing their own Living Rivers program, which would include stand alone legislation (the Government has since been incredibly slow to deliver on this commitment and have not yet finalised the policy and legislation).

2005 (Sept) *Wild Rivers Act* 2005 passes in the Queensland Parliament, with the votes and support of the Queensland Liberal Party.

2005 (Dec) First six wild river basins nominated for protection under the *Wild Rivers Act* 2005: Settlement Creek, Gregory River, Morning Inlet, Staaten River, Hinchinbrook Island and Fraser Island. Formal community consultation begins. Public submission period is open until mid-late February 2006.

2005 (Jan) Queensland Government extends submission period for

nominated wild river areas in the Gulf Country and the draft Wild Rivers Code until late April 2006, following concerns that the consultation period was inadequate.

2006 (April) Public submission period closes for the four proposed Wild River declarations in the Gulf Country.

2006 (May) Staff from The Wilderness Society receive a phone call from a close ally and friend of Noel Pearson who declares: “it’s war”. The phone call and Musgrave speech (below) signals the commencement of a forceful public campaign by Noel Pearson, the Cape York Land Council and Balkanu Cape York Development Corporation, against Wild Rivers and The Wilderness Society.

2006 (June) Noel Pearson addresses an AgForce meeting at Musgrave Station in central Cape York, strongly denouncing Queensland’s land clearing laws that and the Wild Rivers legislation. Shortly following the meeting, Liberal MP for Leichhardt, Mr Warren Entsch, facilitates a new alliance to oppose Wild Rivers, including the Cape York Land Council, Balkanu Cape York Development Corporation, AgForce, and the Cook Shire Council.

2006 (June) Following extreme pressure from the peak mining body the Queensland Resources Council, AgForce, and Noel Pearson, Queensland Minister for Water, the Hon Henry Palaszczuk signals a back down on Wild Rivers. The Wilderness Society responds with protests outside the Minister’s office, and thousands of emails from supporters to Premier Peter Beattie demanding no government back down. The Carpentaria Land Council and The Wilderness Society issue a joint media statement to the same effect.

2006 (June) Premier Peter Beattie responds to the debate over Wild Rivers by calling a high-level meeting with key stakeholders. The meeting includes the Premier, Minister Palaszczuk, senior government advisors and public servants, The Wilderness Society, the Carpentaria Land Council, Noel Pearson, the Queensland Resources Council and AgForce. The Premier promises to forge ahead with Wild Rivers, but asks the stakeholders to negotiate a workable way forward.

2006 (July) Premier Peter Beattie announces a raft of negotiated amendments to the *Wild Rivers Act* 2005 and accompanying Wild Rivers Code, which reflects negotiations of the parties in the June 2006 meeting with the Premier. The Premier also announces that the nomination of river basin on Cape York Peninsula will be deferred to allow for greater consultation with Indigenous interests beforehand.

2006 (Sept) The Beattie Government makes the election commitment to create up to 100 Indigenous Wild River Ranger jobs, following advocacy from The Wilderness Society. The initial commitment to protect 19 river basins is Queensland is also reconfirmed in the context of the election. The Government also commits to facilitating a 100 day negotiation period post the election to try and resolve a range of land management issues on Cape York, including Wild Rivers.

2006 (Sept) Beattie Government is re-elected and are therefore compelled to honour the Wild Rivers commitment, including the Indigenous Rangers.

2006 (Oct) Queensland Government introduces the Wild Rivers and Other Legislation Amendment Bill 2006, which reflects the announcement made by Premier Beattie in July 2006 around a negotiated way forward for Wild Rivers.

2006 (Dec) Queensland re-releases the nomination for the four Gulf Country rivers, on the back of the new legislative amendments to the *Wild Rivers Act* 2005. The submission period for comment is set to close in February 2007. Queensland Government also releases a revised Wild Rivers Code for public comment, submissions closing in February 2007.

2007 (Jan) Prime Minister John Howard announces the new Northern Australia Land and Water Taskforce to further Senator Bill Heffernan’s agenda of transforming Northern Australia into the “food bowl of Asia”. As part of the advocacy for the Taskforce, Senator Heffernan heavily criticizes Wild Rivers, and appoints Noel Pearson and Lachlan Murdoch as star recruits to the Taskforce. Warren Entsch, MP for Leichardt, is also made a member of the taskforce.

2007 (Feb) First six wild river areas finally declared after 14 months of consultation and negotiation. This is made effective by the tabling of the Wild Rivers and Other Legislation Amendment Bill 2007, and its passing as an Act two weeks later. The Act also includes further concessions to the agricultural industry, by introducing the concept of property development plans into the *Wild Rivers Act* 2005. This gives agricultural development proponents an opportunity to request changes to a High Preservation Area, if they can prove project viability and that the environmental impact will be negligible.

2007 (April) Noel and Gerhardt Pearson set up the Indigenous Environment

Foundation to “run a guerrilla campaign against The Wilderness Society”, specifically focused on the Wild Rivers issue (“War in the Wilderness”, Good Weekend, John van Tiggelen, 22/09/2007). The Foundation holds protests at a number of Wilderness Society events, and hands out materials slandering The Wilderness Society and denouncing Wild Rivers.

2007 (June) Premier Peter Beattie tables the *Cape York Peninsula Heritage Bill* 2007 in parliament, announcing that an agreement has been reached between the Queensland Government, The Wilderness Society, the Australian Conservation Foundation, the Cape York Land Council, the Balkanu Development Corporation, the Cook Shire Council, AgForce and the Queensland Resources Council on the future land management of Cape York Peninsula. The agreement follows several months of negotiation and includes a way forward for World Heritage listing on Cape York, a new form of Aboriginal National Parks, relaxing of land clearing restrictions for Indigenous communities, and amendments to the *Wild Rivers Act* 2005 to explicitly protect Native Title rights, and to ensure Indigenous water reserves in Wild River declarations. Noel Pearson endorses the Heritage Act and declares that the Cape native title crusade had been won and the Cape York Land Council’s heralds the Bill as a victory.

2007 (Sept) Premier Peter Beattie steps down and Anna Bligh becomes Premier of Queensland.

2007 (Oct) Queensland Parliament passes the Cape York Peninsula Heritage Act 2007 with bi-partisan support. Only Australia’s last remaining One Nation MP – Rosa Lee Long – opposes the Act. Premier Bligh hails the passage of the Act as “one of the most significant land management initiatives in the State’s history”.

2007 (Nov) In the heat of the Federal Election, Noel Pearson and the Cape York Land Council renege on the Cape York Peninsula Heritage Act agreement and incorrectly accuse the Queensland Government, Kevin Rudd, The Wilderness Society and the Greens of secretly including bigger areas in the Wild Rivers scheme on Cape York through a “preference deal”. The Wilderness Society issues a media statement expressing strong disappointment that the agreement was so quickly dropped by Pearson and others.

2007 (Nov) In response to the fresh accusations from Pearson and the Cape York Land Council, the Queensland Government convenes a meeting between The Wilderness Society, the Australian Conservation Foundation, Balkanu Cape York Development Corporation and the Cape York Land Council. Three Queensland Ministers are present at the meeting, and discussions commence once again for a way forward on Wild Rivers.

2007 (Dec) The same parties from the November 2007 meeting meet again to discuss Wild Rivers and other land tenure issues on Cape York.

2008 (Feb) Premier Anna Bligh writes to the November 2007 meeting parties, once again, regarding Wild Rivers and other land management issues on Cape York. The Premier reaffirms her commitment to Wild Rivers, and extensive consultation with Traditional Owners before making final declarations.

2008 (Feb) On the back of the Premier’s letter, the Queensland Government convenes another meeting between the November 2007 parties. Among other land tenure issues on Cape York, discussions continue for a way forward on Wild Rivers, including working towards an agreed timeline for the roll out Wild River nominations on Cape York.

2008 (April) Following negotiations, Queensland Minister for Water, Craig Wallace, writes to the Cape York Tenure Resolution Implementation Group members outlining the agreed timeline for the roll out of Wild River nominations. This includes four phases: 1) The Archer, Stewart and Lockhart River (and possibly Jackey Jackey Creek) Basins immediately 2) Wenlock River Basin before the end of 2008 3) Ducie, Watson, Olive and Pascoe River Basins in 2009 and 4) Jardine, Holroyd, Coleman and Jeannie River Basins in 2010.

2008 (July) Queensland Government announces that the first 20 Indigenous Wild River Rangers have now been employed.

2008 (July) Queensland Government formally nominates the Archer, Stewart and Lockhart River Basins under the *Wild Rivers Act* 2005. Public submission period set to close in late November 2008. Gerhardt Pearson’s Balkanu Cape York Development Corporation is contracted by the Queensland Government to help facilitate the consultation process.

2008 (Nov) Public submission period closes for the proposed Wild Rivers declarations for the Archer, Stewart and Lockhart River Basins.

2008 (Dec) Queensland Government nominates the Wenlock River Basin for Wild River protection. Public submission period set to close at the end of May 2009.

2009 (March) Conservation groups (including The Wilderness Society) and grazier groups (collectively known as the Western Rivers Alliance) launch a campaign to ensure the long-term protection of the rivers of Queensland’s Channel Country.

2009 (March) Bligh Government responds rapidly to the Western Rivers Alliance, promising to extend the Wild Rivers initiative to the Georgina, Diamantina and Cooper Creek Basins. Premier Anna Bligh also re-commits to protecting the identified river basins on Cape York, as well as following through with the Indigenous Wild River Ranger program.

2009 (March) Discussions take place between The Wilderness Society, Balkanu and Australian Conservation Foundation regarding a joint World Heritage policy position and advocacy to Queensland Government, resulting in a joint letter to the Bligh Government with a series of election asks.

2009 (March) Bligh Government is re-elected having recommitted to the Wild Rivers initiative, including the Indigenous Rangers.

2009 (April) Ten months after their nomination, Premier Anna Bligh announces the formal declaration of the Archer, Stewart and Lockhart River Basins. The Wilderness Society applauds the move, while Noel Pearson declares that Premier Bligh had “urinated on the rights” of Indigenous people, and re-commences a sustained anti-Wild Rivers campaign in the media. The Wilderness Society then receives an abusive phone call, which once again declares ‘war’ over Wild Rivers.

2009 (July) Queensland Government announces expansion of the Indigenous Wild River Ranger program, with another 10 positions provided for.

2009 (Oct) Indigenous Wild River Ranger Program receives Premier’s Award, in recognition of the overwhelming success of the program.

2009 (Dec) Queensland Government announces that a decision on the proposed Wild River declaration for the Wenlock will be further delayed, as additional science is compiled and considered concerning the Coolibah Springs Complex. The Wilderness Society and Australia Zoo express clear expectations that the declaration should protect parts of the Steve Irwin Wildlife Reserve from the proposed Cape Alumina mine.

2010 (Jan) Federal Opposition Leader Tony Abbott announces his intentions to overturn the *Wild Rivers Act* 2005.

2010 (Feb) The Northern Australia Land and Water Taskforce, with a renewed membership following the election of the Rudd Government, releases their report into the future of Northern Australia. The CSIRO also releases a series of science report considering the future of the North. Both point to the very serious constraints of irrigated agriculture and dams in the region, and highlight the need to protect and manage river systems in their entirety.

2010 (Feb) Tony Abbott introduces the Wild Rivers (Environmental Management) Bill 2010 into the House of Representatives. An identical Bill is later introduced into the Senate, and referred to the Senate Legal and Constitutional Affairs Legislation Committee.

2010 (March) Senate Legal and Constitutional Affairs Legislation Committee conducts hearing in Cairns.

2010 (June) Queensland Government announces the Wild River declaration for the Wenlock River Basin. The declaration includes 500m buffers around the Coolibah Springs Complex on the Steve Irwin Wildlife Reserve, which Cape Alumina claims will render their mine unviable.

2010 (June) Senate Legal and Constitutional Affairs Legislation Committee releases reports into Wild Rivers Inquiry, with the majority report concluding that Wild Rivers was not stopping economic development and that Abbott’s Bill should not be supported.

2010 (June) Despite the majority report, the Senate passes the *Wild Rivers (Environmental Management) Bill* 2010 with the support of Senator’s Steve Fielding and Nick Xenophon (however the Bill then expires in the House of Representatives when the Federal election is called).

2010 (Sept) Gillard Government is reformed following the announcement by independents Tony Windsor and Rob Oakeshott that they will support the ALP in government. The morning of the announcement, Noel Pearson appears on the front page of The Australian declaring his support for an Abbott Government and pleading for Rob Oakeshott to support Abbott, largely based on his opposition to Wild Rivers.

2010 (Sept) Opposition Leader Tony Abbott announces that his first priority

in parliament will be to re-introduce his anti Wild Rivers Bill.

2010 (Sept) A group of Indigenous leaders from across Far North Queensland release a statement rejecting Tony Abbott’s attempt to overturn the Wild Rivers legislation, and emphasise that Noel Pearson is not their “elected leader”. Some of these leaders travel to Parliament House in Canberra to deliver their message to key politicians, as well as the national media, during the first week of the new Parliament.

2010 (Sept) The Anglican Church releases a series of reports attacking Wild Rivers because it prevents dams and irrigated agricultural development near river banks. Noel Pearson joins the Church at the public launch of the reports, claiming that they are “independent”, “objective” and “comprehensive”. The Church fails in their reports to even mention the Indigenous Wild River Rangers, or any potential jobs in sustainable industries such and land management and tourism.

2010 (Oct) Tony Abbott announces that he will delay tabling his anti Wild Rivers Bill in parliament, in order to “consult” with Murrumbidgee and other Indigenous people in Far North Queensland.

2010 (Oct) Cape Alumina formally announces to the Australian Stock Exchange that their proposed bauxite mine on the Steve Irwin Wildlife Reserve is not viable unless the Wild River declaration for the Wenlock River Basin is revoked.

2010 (Oct) Queensland Government introduces the *Water and Other Legislation Amendment Bill* 2010, which includes a series of amendments to incorporate the Lake Eyre Basin river systems, and clarify a number of other issues. The move is welcomed by key graziers and Traditional Owners.

2010 (Nov) Tony Abbott tables his *Wild Rivers (Environmental Management) Bill* 2010 in Federal Parliament. Cape Alumina responds immediately by declaring they will lobby politicians to support Abbott’s Bill, in order to remove protections on the Steve Irwin Wildlife Reserve. Indigenous leader Murrumbidgee calls the Bill a “dog’s breakfast” and accuses Abbott of using Indigenous people as a political football.

2010 (Nov) Water and Other Legislation Amendment Bill 2010 is passed in the Queensland Parliament, allowing the Government to proceed with Wild River nominations for the Lake Eyre Basin river systems.

2010 (Nov) House of Representatives Economics Committee conducts hearings for the Indigenous economic development and Wild Rivers inquiry in Cairns, Weipa and Bamaga.

2010 (Dec) Draft Cooper Creek Wild River proposal released for public consultation, with submissions due by the of April 2011.

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Front page image: Fruit Bat Falls on Cape York Peninsula, by Kerry Trapnell.
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Protecting Rivers, Supporting Communities

A report series by The Wilderness Society for the House of Representatives Economics Committee's *Inquiry into issues affecting Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010*

Environmental Regulation in Queensland

Report 3 of 6 – Feb 2011



Summary

This report provides an overview of existing environmental regulation in Queensland, and considers whether this regulatory system is adequate to protect healthy river systems, using Cape York Peninsula as a case study to demonstrate how environmental regulation affects key development activities. A brief summary of each section in this report is as follows:

Environmental Regulation in Queensland: Queensland's environmental legal system is comprised of four levels; international law, federal law, state law and common law. The major area of regulation is governed by the State of Queensland, which has powers under the Australian Constitution to regulate land and water management. Some Commonwealth laws, particularly the *Environment Protection and Biodiversity Conservation Act 1999* also play a key role in this regulatory system.

Healthy River Protection – Are Current Regulations Adequate?: Using a benchmark test of the precautionary principle, we broadly conclude that the Queensland regulatory system is reasonably well developed to provide for the protection of healthy river systems, mostly because of the *Wild Rivers Act 2005*, and the vital gap it fills in whole-of-catchment management. Overturning the *Wild Rivers Act 2005*, as the Opposition Leader Tony Abbott has previously stated as his intention with his *Wild Rivers (Environmental Management) Bill 2010*, would greatly erode the effectiveness of this regulatory system.

Environmental Regulation and Development Activities on Cape York Peninsula: A summary table outlining various forms of development activities with analysis of the level of applicable environmental regulation, indicates that large-scale irrigated agriculture and native forest logging are the most tightly controlled development activities in the region, given their very high environmental impact. Other development activities are either strongly supported by the regulatory regime, or require reasonable regulation to minimise environmental impact.

How this report relates to the Terms of Reference of the Inquiry

This report addresses the following components of the Terms of Reference:

- [The Committee should consider:] existing regulation, legislation in relation to mining and other relevant legislation including the *Wild Rivers Act (Qld) 2005* and the *Environment Protection and Biodiversity Conservation Act 1999*
- [The inquiry should pay particular attention to the following:] The effectiveness of current State and Commonwealth mechanisms for appropriate preservation of free-flowing river systems which have much of their natural values intact, including the preserving of biodiversity
- [The inquiry should pay particular attention to the following:] Options for improving environmental regulation for such systems

Environmental Regulation in Queensland

The Queensland environmental legal system is comprised of four levels; international law, federal law, state law and common law. This report provides a snap-shot of the Queensland and Commonwealth Government laws that relate directly to the regulation of land and water management and therefore, regulation of development activities. (see McGrath 2006 for an excellent synopsis of the entire system of environmental legislation and regulation)

Queensland Legislation

The Australian Constitution vests core responsibility for the regulation and management of land and water in the states. It is therefore at the state level where the majority of Queensland's environmental regulation is based. Below is a brief summary of the core state legislation relating to environmental protection and the regulation of development activities in Queensland:

“The Australian Constitution vests core responsibility for the regulation and management of land and water in the states”

Cape York Peninsula Heritage Act 2007 – Provides for a vehicle number of reforms in relation to land use and Indigenous rights on Cape York Peninsula. This includes special clearing exemptions for Indigenous communities through the creation of “Indigenous Community Use Areas” (ICUAs); and a pathway for a World Heritage listing for the region by the declaration of a “Areas of International Conservation Significance” (AICS), a new form of Aboriginal owned and jointly managed National Park; and confirmation of native title rights in the *Wild Rivers Act 2005*. The Act was negotiated by various parties as a settlement to disputes over sustainable development, Wild Rivers and other land use matters.

Coastal Protection and Management Act 1995 - Provides for the development of State and regional planning and integrated approval processes in relation to coast development. The Act also provides for the regulation of dredging, quarrying, canal construction, tidal works and other activities in the coastal zone, in particular in coastal management districts and erosion prone areas. (McGrath 2006)

Environmental Protection Act 1994 – This is a multifaceted Act with the aim of ensuring “ecologically sustainable” development in Queensland. It does this by providing for a number of regulatory tools including: Environmental Protection Policies for water, air, noise and waste management; Environmental Impact Statement process for mining activities; a licensing system for “environmentally relevant activities”; establishment of the general environmental duty; a system of environmental evaluations and audits; Environmental Management Programs; Environmental Protection Orders; Financial Assurances; a system for the management of contaminated land; Environmental Offences; investigative powers of authorised officers including power to give an emergency direction; civil enforcement provisions to restrain breaches of the Act with widened standing for public interest litigants; and public reporting on information on the environment.

Fisheries Act 1994 – Provides the State's legislative framework for the regulation of fisheries, coastal areas important as fisheries habitat, and marine plants. The Act provides a range of mechanisms aimed at the sustainable management of fisheries including management plans, quotas, offences, licences and declarations of closed seasons, closed waters and fisheries habitat areas. (McGrath 2006)

Forestry Act 1959 – Regulates the use of forest products such as timber on all State land including State forests, leasehold land and unallocated State land (in total, approximately 80% of the State). A central definition of the Act is “forest products” which means all vegetable growth and material of vegetable origin. For designated timber producing areas such as State forests, “forest products” also include honey, native animals, fossils and quarry material. (McGrath 2006)

Land Act 1994 – Provides a framework for the allocation of State land either as leasehold, freehold or other tenure. The importance of the allocation of land to the environmental legal system is central to resource use and management. The decision to lease land, sell land as freehold, dedicate it as national park or other tenure will in large part determine how that land is used. This creates the fabric of tenures, which in practice constrain the environmental legal system, politically if not legally. (McGrath 2006)

Land Protection Act (Pest & Stock Route Management) 2002 – Provides a framework for the control of declared pests such as foxes, feral pigs and groundsel??. In addition to pests, the Act also provides a framework for managing Queensland's 72,000km of stock routes, which remain of considerable importance in rural areas for the movement and agistment of cattle and sheep, and also remnant biodiversity corridors. (McGrath 2006)

Marine Parks Act 2004 – Establishes a framework for the identification, gazettal and management of protected areas as Marine Parks and the protection of marine species. It adopts a planning and management approach of establishing zoning plans for multiple-use management and a permit system for activities within marine parks such as collecting marine products or commercial whale watching. (McGrath 2006)

Mineral Resources Act 1989 – Provides a framework to regulate tenure and royalty issues associated with exploration and mining for minerals (defined not to include petroleum) on land in Queensland. Mining is exempt development under the Sustainable Planning Act 2009. In effect mining may occur at any location where sufficient mineral reserves are established and the public interest (including any deleterious environmental effects) warrants the grant of the mining lease. The one exception to this rule is in the case of mining leases in a national park or conservation park. (McGrath 2006)

Native Title Act 1993 – Validates past acts attributable to the Queensland Government that may have affected native title and asserts that certain acts have extinguished native title. Importantly for environmental law, s17 asserts the existing ownership of the State Government to all natural resources, the right to use, regulate and control the flow of waters and fishing access rights. Whether native title has been extinguished for these matters remains uncertain. (McGrath 2006)

Nature Conservation Act 1992 - Establishes a framework for the identification, gazettal and management of protected areas (such as national parks) and the protection of native flora and fauna (protected wildlife). Section 27 of the Act prohibits the granting of a mining lease in a national park or conservation park. (McGrath 2006)

Petroleum and Gas (Production and Safety) Act 2004 – Regulates petroleum exploration, extraction (including coal seam gas) and pipeline licensing for tenures granted after 2004. Due to native title complications, the Petroleum Act 1923 continues to regulate the exploration and extraction of petroleum (including natural gas) for licences granted prior to 2004. (McGrath 2006)

State Development and Public Works Organisation Act 1971 – Draws together a range of powers and functions which are used by the State Government to promote and facilitate large projects in Queensland. The Act provides a formal environmental impact statement process in ss26-35 for significant projects. The Act provides a range of mechanisms to facilitate large development projects including declarations of prescribed development of State significance, State development areas and a power to compulsorily acquire land for large infrastructure facilities. The latter provision aims to facilitate large infrastructure projects such as dam construction by private companies. (McGrath 2006)

Sustainable Planning Act 2009 – This is Queensland’s central planning legislation, which seeks to achieve “ecological sustainability” by managing the effects of development on the environment, and seeks to integrate planning across government at the local, regional and state levels. “Development” is defined in the Act as carrying out a building, plumbing or operational work, reconfiguring a lot, or making a material change of use of premises. Importantly, the Act establishes the Integrated Development Assessment System (IDAS), which covers the approvals process for almost all developments in Queensland. For this reason, the Act is tightly linked with many other bits of legislation dealing with the regulation of development, including the Wild Rivers Act 2005. However, mining is exempted as development under the *Sustainable Planning Act 2009*, meaning this Act has little capacity to address sustainability issues with mining.

Vegetation Management Act 1999 – Operates closely with the *Sustainable Planning Act 2009* to prevent broad-scale clearing of remnant vegetation on all tenures except State forests, national parks, forest reserves and other tenures defined under the *Forestry Act 1959* and *Nature Conservation Act 1992*. It does this by requiring permits for clearing to be assessed against regional vegetation management codes. Some important regrowth vegetation is also protected via the *regrowth vegetation code*. Clearing for some activities such as fences, firebreaks, weed control, some urban development and most mining activities, are largely exempt from the regulations. On Indigenous and freehold land, clearing can also occur for a native forest practice, if clearing complies with the *Code applying to a Native forest practice on freehold land*.

Water Act 2000 - Provides a framework for the planning and regulation of the use and control of water in Queensland. This includes regulating both major water impoundments (dams, weirs, etc.) and extraction through pumping for irrigation and other uses. Water Resource Plans are statutory instruments under the Act which are prepared through a consultative process generally on a catchment-by-catchment basis. Water Resource Plans form the “baseline” plan for how much water can be taken out of catchments and represent a limit to water use. Resource entitlements are then granted in accordance with Water Resource Plans. In addition to these planning controls, the destruction of vegetation, excavation or placing fill in a watercourse, lake or spring is regulated through this Act. (McGrath 2006)

Wet Tropics World Heritage Protection and Management Act 1993 – Establishes a framework for regulating land use development and management within the Wet Tropics World Heritage Area, implemented through the statutory *Wet Tropics Management Plan 1998*. It provides a zoning plan to control development and activities within the Wet Tropics World Heritage Area. (McGrath 2006)

Wild Rivers Act 2005 – Provides a framework for the preservation of the natural values of rivers that have all, or almost all, of their natural values intact. Operating through enabling legislation such as the *Sustainable Planning Act 2009*, the *Water Act 2000* and other Acts, “wild river areas” are declared in healthy river catchments, effectively providing a buffer around major aquatic features, within which destructive activities such as strip-mining, intensive irrigation and dams cannot occur. For some other development activities in these areas, the bar for environmental approval is set slightly higher, and water extraction is capped at a sustainable level.

Commonwealth Legislation

The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) is the major Commonwealth piece of legislation dealing with development approvals and other matters. It regulates impacts on matters of national environmental significance, impacts on the environment involving the Commonwealth or Commonwealth land, killing or interfering with listed marine species and cetaceans (e.g. whales), and international trade in wildlife.

By far the most important regulatory mechanism created by the EPBC Act is the approval system for actions with a significant impact on matters of national environmental significance (including the world heritage values of a declared World Heritage property, listed threatened species and ecological communities, listed migratory species, nuclear actions, Commonwealth marine actions, the ecological character of a declared Ramsar wetland, and the National Heritage values of a declared National Heritage place). In many cases this creates obligations for the environmental impact assessment process for developments.

Most Commonwealth legislation relating to the environment and development activities deals with issues such as the regulation of Commonwealth marine waters; trading of goods; restoring the health of the Murray-Darling Basin; and energy policy (including air pollution). In Queensland, such Commonwealth legislation includes the management and protection of the Great Barrier Reef, and fisheries:

Fisheries Management Act 1991 – This operates together with the *Fisheries Act 1994 (Qld)* to regulate fisheries within the Australian fishing zone (other than in Torres Strait) under complex arrangements made following the Offshore Constitutional Settlement. (McGrath 2006)

Great Barrier Reef Marine Park Act 1975 – Establishes a framework for the protection and management of the Great Barrier Reef Marine Park (“GBR”). *The Great Barrier Reef Marine Park Regulations 1975* establish a zoning plan for the GBR based on the concept of multiple-use management, with fully protected areas now set at 33%. The Act and Regulations also provide a range of specific management tools such as plans of management and compulsory pilotage areas for shipping. *The Great Barrier Reef Marine Park (Aquaculture) Regulations 2000* prescribe a licensing system to regulate aquaculture discharges into the GBR. (McGrath 2006)

Water Act 2007 – Establishes the *Murray-Darling Basin Authority* tasked with ensuring that Basin resources are managed sustainably by preparing a Basin Plan. The Act also establishes a *Commonwealth Environmental Water Holder* to manage the Commonwealth’s environmental water, and provides the Australian Competition and Consumer Commission (ACCC) with a central role in developing and enforcing water charge and water market rules.

“Most Commonwealth legislation relating to the environment and development activities deals with issues such as the regulation of Commonwealth marine waters, trading of goods, restoring the health of the Murray-Darling Basin, and energy policy (including air pollution)”

Healthy River Protection – Are Current Regulations Adequate?

The Terms of Reference for this Inquiry calls for attention to the “effectiveness of current State and Commonwealth mechanisms for appropriate preservation of free-flowing river systems which have much of their natural values intact, including the preserving of biodiversity”. So does the current regulatory system in Queensland, outlined above, deliver on this goal of protecting healthy, free-flowing river systems?

Measuring the Health of River Systems

“River health” is a useful and widely understood concept for understanding the ecological condition of a river system, including its various values, ranging from those relating to human needs (such as freshwater and recreation), and biodiversity. Current methodologies for assessing river health include examining physical form, water quality, aquatic biota, hydrological disturbance and catchment disturbance. Examining the health trajectory of Queensland’s free-flowing rivers is therefore one way of determining the effectiveness of Queensland’s regulatory system. However, this is not a straightforward task.

“Measuring the health trajectory of free-flowing river systems in Queensland poses the additional problem that it does not assess the level of immediate or future threat to the river system ...”

Data collection across Queensland is highly variable. The vast bulk of scientific research and monitoring is done in stressed river systems on the east coast and in the Murray-Darling Basin, where there are higher levels of population and development compared with other regions (and therefore greater political and economic impetus to focus research in these areas).

For instance, in South East Queensland there is an excellent collaborative program between governments, industries, research organisations and community groups (“Healthy Waterways”), which produces an annual report card on the health of river catchments in the area. Similarly, the “Sustainable River Audit” is another collaborative river monitoring program focussed in the Murray-Darling Basin, providing regular assessments of the health of the river systems in the basin area.

But for the free-flowing rivers of Cape York Peninsula and the Gulf of Carpentaria, this level of investment, infrastructure (such as stream gauges) and capacity does not exist to conduct such a rigorous monitoring program. While it is well established in the scientific literature that these river systems are currently in good ecological health (for example see Department of Environment and Heritage 1998; Mackey et al 2001; Smith et al 2005), it is difficult to measure the trajectory of their relative health (eg. declining or improving) to the same degree as areas in South-East Queensland or the Murray-Darling Basin.

Measuring the health trajectory of free-flowing river systems in Queensland poses the additional challenge that it does not assess the level of immediate or future threat to the river system: one year a river system might be deemed as healthy, and the next in a rapidly declining state to the construction of a dam or extensive strip mining. If there are immediate threats that cannot be stopped by regulation, the regulation is inadequate. We must therefore consider other measures of regulatory success.

Precautionary Principle as an Additional Measure of Regulatory Success

A more useful measure of regulatory success is to examine whether or not the system prevents the types of development and other human-caused environmental impacts that present a very high risk to river health; in other words, assessing whether the regulatory system sufficiently embraces the precautionary principle.

“Essentially this principle calls for decision makers to prevent environmental harm before it occurs, particularly when the risk of such harm is high and there is scientific uncertainty of the consequences of an action or development”

The precautionary principle is a preventative concept stemming from the “duty of care” in English common law (Neville 2005: p.2). The 1982 United Nations *World Charter for Nature* was the first international agreement that adopted the precautionary principle, influencing future international treaties and declarations, and therefore Australian law. Chief among the declarations is the 1992 *Rio Declaration on Environment and Development*, which further established the principle by providing that:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Principle 15)

Essentially this principle calls for decision makers to prevent environmental harm before it occurs, particularly when the risk of such harm is high and there is scientific uncertainty of the consequences of an action or development. The application of this approach also helps reduce the effect of cumulative impacts and the “tyranny of small decisions” (see Odum 1982), where many small-scale developments may as a whole produce a significant environmental impact.

So how can this principle be used as a measure of the Queensland regulatory system? The first thing to establish is a set of broad threats agreed by ecologists as posing a serious threat to the health of river system. Some of the world’s foremost river ecologists have grouped these threats into five major categories (see Dudgeon 2005 et al):

1. **Water pollution:** this includes agricultural runoff, and toxic chemicals or heavy metals from mining and urban areas.
2. **Habitat destruction and degradation:** river systems drain water from the surrounding landscape, so the clearing of land and destruction of natural forests, woodlands or grasslands directly impacts on their health.
3. **Flow modification:** this includes the impoundment of water in dams and weirs and alteration of the timing of natural flows down a river system, as well as the amount of water and its chemistry.
4. **Species invasion:** invasive weeds and other feral animals quickly capitalise in modified environments, further exacerbating native species decline.
5. **Overexploitation:** this includes over-fishing and uncontrolled exploitation of freshwater species.

If the range of legislation noted in the previous section is analysed against these broad threats, a rough picture of how the regulatory system meets the precautionary principle standard as it applies to maintaining river health can be established. This is outlined in the table on the next pages.

Legislation Measured Against Key River Threats

LEGISLATION	OVERALL ASSESSMENT	WATER POLLUTION	HABIT DEGRADATION	FLOW MODIFICATION	SPECIES INVASION	OVEREXPLOITATION
Queensland Legislation						
<i>Cape York Peninsula Heritage Act 2007</i>	Limited in scope as it applies to rivers, though it may provide future benefits as being a vehicle to ensure a World Heritage listing for appropriate parts of the Cape York Peninsula region.	Does not regulate pollution into waterways.	Somewhat contradictory as it provides an exemption for some habitat destruction, but also establishes a path to World Heritage listing, which could lead to substantial protection of habitat.	Does not regulate flows or impoundments, and provides for Indigenous water reserves in declared wild river areas.	Does not deal directly with the regulation of invasive species.	Does not regulate fishing.
<i>Coastal Protection and Management Act 1995</i>	Limited in scope as it applies to rivers, some minor benefits to river health through regulation of estuary development.	Does little to regulate pollution into waterways.	Manages some destruction of habitat linked to aquatic environments, but limited in scope and geographical application (ie in coastal areas).	Regulates some development such as dredging, which can affect natural flows of river systems, as well as fish populations.	Does not deal with the regulation of invasive species.	Does not regulate fishing.
<i>Environmental Protection Act 1994</i>	Focussed on controlling contaminants and pollution, though even this is limited in effectiveness. Does not consider holistic management of river catchment.	Regulates and controls pollution into waterways and water quality, however does not manage cumulative impacts well; mine spills frequently occur; and agricultural chemicals remain a poorly regulated area.	Sets up EIS process for major development (linked with other legislation) however, the Act itself is focussed on managing contaminants rather than habitat destruction and degradation.	Sets up EIS process for major development (linked with other legislation) however, the Act itself is focussed on managing contaminants rather than impacts on natural flows.	Does not deal with the regulation of invasive species.	Does not regulate fishing.
<i>Fisheries Act 1994</i>	Focussed mainly on marine environment, so little bearing on river health.	Focussed on marine environment.	Focussed on marine environment.	Focussed on marine environment.	Focussed on marine environment.	Fishing regulated in some estuaries – focussed mainly on marine environment.
<i>Forestry Act 1959</i>	Limited in scope as it applies to river health, some benefits through phasing out of native forest logging.	Does not regulate pollution into waterways.	Includes provision for the phasing out of native forest logging in some areas, which directly benefits some healthy river catchments.	Does not regulate flows or impoundments.	Does not deal with the regulation of invasive species.	Does not regulate fishing.
<i>Land Act 1994</i>	The tenure system as a whole has a profound bearing on how a catchment and therefore river health is managed, but this Act does not provide regulatory oversight of key threats.	Does not directly regulate pollution into waterways.	Conditions tied to leases can affect how a landscape and catchment are managed in a significant way, though likely to be patchwork.	Does not regulate flows or impoundments.	Does not deal with the regulation of invasive species, except in a very minor way through conditions of leases.	Does not regulate fishing.
<i>Land Protection Act 2002</i>	Limited in scope as it applies to regulating invasive species primarily relating to threat to agricultural land.	Does not regulate pollution into waterways.	Does not regulate habitat destruction.	Does not regulate flows or impoundments.	Regulates and controls invasive species, though primary purpose is protected agricultural land, not ecosystems.	Does not regulate fishing.
<i>Marine Parks Act 2004</i>	Focussed mainly on marine environment, so little bearing on river health.	Focussed on marine environment.	Focussed on marine environment.	Focussed on marine environment.	Focussed on marine environment.	Fishing regulated in some estuaries – focussed mainly on marine environment.
<i>Mineral Resources Act 1989</i>	Designed to facilitate development, not provide protection. Issues related to river health are deferred back primarily to Environmental Protection Act 1994.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.
<i>Nature Conservation Act 1992</i>	Provides good protection of river systems, but only within protected areas, which is most often incongruent with catchment boundaries.	Provides good protection from pollution threats though only in the parcel of land that is a protected area.	National Parks provide high level of habitat protection for parcels of land (although these are mostly incongruent with catchment boundaries)	Prevents excessive water extraction, and destructive dams within the area.	Helps manage invasive species within the area (though resourcing for land managers is the primary issue).	Fishing regulated in some areas of some National Parks.
<i>Petroleum and Gas (Production and Safety) Act 2004</i>	Designed to facilitate development, not provide protection. Issues related to river health are deferred back primarily to Environmental Protection Act 1994.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.
<i>State Development and Public Works Organisation Act 1971</i>	Designed to facilitate development, not provide protection and instead often gives special exemptions for large projects.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.	Designed to facilitate development, not provide protection.
<i>Sustainable Planning Act 2009</i>	Is only as good as the other legislation it links to – otherwise in itself does help integrate planning decisions which affect river health.	Brings together various pieces of environment and planning legislation to integrate approvals process, so only as good as other legislation it links to.	Brings together various pieces of environment and planning legislation to integrate approvals process, so only as good as other legislation it links to.	Brings together various pieces of environment and planning legislation to integrate approvals process, so only as good as other legislation it links to.	Brings together various pieces of environment and planning legislation to integrate approvals process, so only as good as other legislation it links to.	Does not regulate fishing.
<i>Vegetation Management Act 1999</i>	Plays an important role in maintaining the integrity of vegetation in a catchment area and therefore river health.	Does not directly regulate pollution into waterways.	Is the primary regulation in Queensland for preventing landscape destruction and clearing of forests, which has direct positive benefits for river systems.	Does not regulate flows or impoundments.	Invasive species most often follow disturbed and cleared environments, so there is a direct benefit of this legislation here.	Does not regulate fishing.
<i>Water Act 2000</i>	Can provide a good level of flow protection if used in this manner, major gap is lack of regulation of development near rivers.	Provisions for water quality and pollution regulation are very limited given the primary focus is water allocation and management.	Some habitat and waterway destruction is controlled, but there are significant exemptions for mining activities.	Has the capacity to prevent dams on certain streams, and cap water extraction at sustainable levels, though much is left to Ministerial discretion.	Does not deal well with the regulation of invasive species.	Does not regulate fishing.
<i>Wet Tropics World Heritage Protection and Management Act 1993</i>	Provides good protection of river systems, but this is only within the listed area so is not holistic management.	Provides good protection from pollution threats through management of development and zoning system.	Prevents habitat destruction near waterways and helps maintain health of entire catchments within the area.	Prevents excessive water extraction, and destructive dams within the area.	Helps manage invasive species within the area (though resourcing for land managers is the primary issue).	Does not regulate fishing.
<i>Wild Rivers Act 2005</i>	A critical regulatory tool in Queensland. Without this Act, many serious risks are only partially managed in healthy river systems.	The High Preservation Area buffer zone plays a major role in preventing high risk development and pollution near streams.	Aside from National Parks, there is no other explicit regulatory tool available to prevent strip-mining near river system than this Act – it therefore plays a major role in preventing habitat destruction.	Explicitly prevents the construction of dams on important river systems and caps water extraction at a sustainable level.	Helps prevent the deliberate introduction of pest fishes and high risk weed species.	Does not regulate fishing.
Commonwealth Legislation						
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	Protecting river health requires holistic management and this Act is too piecemeal and focussed on individual species and places to deliver this alone.	Deals poorly with cumulative impacts of pollution as it relates to entire river health – is more focussed on single species or parcels of land listed as World Heritage areas or Ramsar wetlands.	Deals poorly with cumulative impacts of habitat destruction as it relates to entire river health – is more focussed on single species or parcels of land listed as World Heritage areas or Ramsar wetlands.	Has been used to prevent destructive dams, but decisions are highly discretionary. There is no trigger in the Act for excessive water extraction or protection of whole river systems.	Does not deal well with the regulation of invasive species, particularly as it applies to affecting a whole river system.	Does not regulate fishing unless they are a threatened species.
<i>Fisheries Management Act 1991</i>	Focussed mainly on marine environment, so little bearing on river health.	Focussed on marine environment.	Focussed on marine environment.	Focussed on marine environment.	Focussed on marine environment.	Focussed on marine environment.
<i>Great Barrier Reef Marine Park Act 1975</i>	Focussed mainly on marine environment, so little bearing on river health.	Focussed on marine environment.	Focussed on marine environment.	Focussed on marine environment.	Focussed on marine environment.	Focussed on marine environment.
<i>Water Act 2007</i>	The Act applies to a degraded system (with the exception of the Paroo), and does not deal with broader river health threats such as point-source pollution or inappropriate development.	Focussed on regulating water extraction and management, though the capping and reduction of water extraction would very likely lead to some reduction of pollution risks.	Focussed on regulating water extraction and management.	This Act only applies to the Murray-Darling Basin. It does have the capacity to cap and reduce water extraction, but as the plan has not been resolved the benefits for healthy river systems (the Paroo chiefly) remains to be seen.	Does not deal well with the regulation of invasive species.	Does not regulate fishing.

The major points that can be drawn from this table assessment are:

- *The Wild Rivers Act 2005* is a vital piece of the regulatory system, given that it is the only holistic regulation that links the health of the catchment with the health of the river, and applies a strong precautionary principle approach to the sorts of development permitted near a river system;
- Commonwealth legislation plays a minor role in the Queensland regulatory system in protecting healthy river systems;
- *The Environment Protection and Biodiversity Conservation Act 1999* is too piecemeal and focussed on protecting certain places and individual species rather than whole-of-landscape protection, including river systems. This is an important point, as some have argued that the Wild Rivers Act 2005 is unnecessary with this legislation in place;
- The major gap in Queensland's *Water Act 2000* in protecting health rivers is the lack of regulation of development activities in and near waterways and other important aquatic features;
- National Parks and protected areas play a role in maintaining river health, but this is limited only to the parcels of land within which the river flows or catchment lies. They are ineffective by themselves to manage whole river catchments, unless it falls entirely within the protected area;
- The *Vegetation Management Act 1999* plays a key role in the regulatory system of maintaining whole-of-landscape health and habitat – it is an important complimentary tool to the Wild Rivers Act 2005; and
- The regulation of invasive species is not particularly robust across the board – this emphasises the need for both stronger regulation in this area, as well as complimentary, non-regulatory programs such as the *Indigenous Wild River Ranger Program*.

Applying this measure of the precautionary principle, then, we can broadly conclude that the Queensland regulatory system is well developed to provide for the protection of healthy river systems, mostly because of the *Wild Rivers Act 2005*, and the vital gap it fills in whole-of-catchment management. There is absolutely no question that overturning the *Wild Rivers Act 2005* or seriously undermining current and future Wild River declarations, as the Opposition Leader has said he intends with his *Wild Rivers (Environmental Management) Bill 2010*, would greatly undermine the effectiveness of this regulatory system.

Wild Rivers Act leading the world

Queensland is privileged to retain some of the world's last free-flowing, healthy rivers. Just like our most treasured places, including the Great Barrier Reef and the rainforests of the Wet Tropics, these highly valued rivers deserve a special form of protection to safeguard their future.

The Wild Rivers Act 2005 achieves this. It is a unique piece of environmental legislation, specifically designed to protect and manage the important natural values of our last healthy river systems, while supporting sustainable economic development.

There is nowhere else in the world with this type of stand-alone river protection legislation that has the ability to manage destructive threats across an entire catchment area. For this reason, Queensland's environmental regulatory system is dramatically enhanced with this legislation.

Environmental Regulation and Development Activities on Cape York Peninsula

Having briefly analysed the Queensland environmental regulatory system, particularly as it applies to managing healthy rivers; it is useful to look at the way in which this system affects development activities.

The following table summarises key development activities that require some level of environmental regulation on Cape York Peninsula outside of the protected area estate (this does represent an exhaustive list of all activities). We have used Cape York Peninsula as an example given much of the focus of the debate around Wild Rivers is related to Indigenous economic development in this region.

The following table shows that large-scale irrigated agriculture and native forest logging are the most tightly controlled development activities in the region, given their very high environmental impact. Other forms of economic development are either strongly supported by the regulatory regime, or require sensible hurdles to minimise environmental impact (other than mining, which is exempt from key pieces of legislation including the *Vegetation Management Act 1999*).

Environmental Regulation and Development Activities on Cape York Peninsula

Form of Development	Level of Regulation	Comments
Animal Husbandry		The effluent from this type of development (ie cattle feedlots or pig and poultry factories) is the major point of regulation, with permits granted through the Sustainable Planning Act 2009 and the Environmental Protection Act 1994. In declared Wild River areas, these activities are not permitted within 500m – 1km of major watercourses or wetlands, unless they are within an urban zone.
Aquaculture		In declared Wild River areas, open aquaculture systems in major water courses are not permitted. However they are permitted in estuarine and coastal areas (with requirement relating to effluent control, health and quarantine), which is where CSIRO has identified as having the most potential for prawn aquaculture. Closed-ring tank aquaculture is permitted throughout Cape York, setback from major watercourses in Wild River areas (water reserves are available in Wild River areas to supply water for this type of activity). Location and supply chains are a major constraint to this industry, rather than regulatory control (see Kleinhart 2005).
Arts and Crafts		There are few regulatory constraints to this industry. It could be strongly argued that the industry is enhanced by the protection of natural and cultural resources.
Bush Foods and Medicines		There are few regulatory constraints to this industry, provided there is no excessive clearing of forests. It could be strongly argued that the industry is enhanced by the protection of natural and cultural resources.
Carbon Abatement (Fire Management)		This is an emerging economic development opportunity on Cape York Peninsula, with other Indigenous communities in the Northern Territory already earning a significant income from such projects. There are few regulatory constraints to fire management – the key hurdle to realising this opportunity is establishing a national carbon price, and clarifying complex tenure issues related to Traditional Ownership and realising broader carbon market opportunities.
Crocodile Farming		Under the Cape York Peninsula Heritage Act 2007, there is a scientific assessment process underway to examine the sustainability of harvesting Crocodile eggs in the community of Pormpuraaw.
Fishing (Commercial)		There are extensive commercial fishing operations in the Gulf of Carpentaria and the Torres Strait with regulatory oversight from the Federal and Queensland Governments (there are very few Marine Protected Areas in these marine waters). On the eastern side of Cape York Peninsula, marine waters are protected by the Great Barrier Reef Marine Park, however most of the zoning in this area allows for commercial fishing (with some conditions).
Irrigated Agriculture (Small-scale)		In declared Wild River areas, irrigated agriculture is not permitted within 500m – 1km of major watercourses and dams cannot be constructed. However for each declaration there is an Indigenous water reserve, plus there are special exemptions for small-scale tree clearing for Indigenous communities under the Cape York Peninsula Heritage Act 2007, which allows for small-scale, boutique irrigated development set back from major watercourses.
Irrigated Agriculture (Large-scale)		In declared Wild River areas, irrigated agriculture is not permitted within 500m – 1km of major watercourses and dams cannot be constructed. There is also little water available for large irrigation schemes, and large areas of forest cannot be cleared to allow for this development. Most importantly, there are significant ecological constraints. This includes low nutrient levels in soil, soils with high erodibility, low water availability (due to seasonality of flows), flooding threats, and acid sulfate soils (CSIRO 2009).
Market Gardens		The primary regulation relating to market gardens is within a High Preservation Area in a declared Wild River area, where 4 hectares is the maximum allowable size. This includes the ability to sell produce commercially. Any tree clearing for a market garden must also comply with the Vegetation Management Act 1999, though there are special clearing exemptions available for Indigenous communities under the Cape York Peninsula Heritage Act 2007.
Mining (Strip-mining)		In declared Wild River areas, new strip mining is not permitted within the 500m – 1km protective buffer zone around major watercourses, springs and wetlands (existing mining leases are exempt). Outside of these areas, however, strip mines are exempt from Queensland's tree clearing laws, so if the company demonstrates that it reaches the low bar set by the Federal Environmental Protection and Biodiversity Conservation Act 1999, the mine will invariably go ahead. In reality, given a range of significant exemptions and the fact that most mining occurs away from waterways and springs (with Cape Alumina being the exception here), there are few constraints to this industry beyond the protective buffers in a Wild River declaration.
Mining (Underground or Point-source)		There are few regulatory constraints to this industry, with the ability to mine underneath a High Preservation Area in a declared Wild River area (providing it can be demonstrated there will be no ground subsidence or impact on groundwater), and establish gas/petroleum wells in this buffer zone, with a setback of 200m from watercourses. In addition, a company has to demonstrate that it reaches the low bar set by the Federal Environmental Protection and Biodiversity Conservation Act 1999.
Natural Resource Management		This is an emerging economic development opportunity on Cape York Peninsula, which includes Indigenous ranger programs and other environmental services. It could be strongly argued that the industry is enhanced by the protection of natural and cultural resources.
Native Forest Logging		Although some selective logging on freehold land is permitted (regulated in Queensland via the Code Applying to a Native Forest Practice on Freehold Land), overall there are reasonably tight controls around native forest logging. There are, however, moves to establish Indigenous timber salvaging operations on lands subject to future bauxite mining.
Pastoralism		There are few regulatory constraints to cattle grazing on Cape York Peninsula, other than permitting required for some infrastructure such as fences, roads, houses, etc (depending on level of impact). Broad-scale tree clearing is not permitted, however given the existing availability of native grasses, and past failures of tree clearing for cattle in the region, this is not seen as necessary for the industry. Feedlots are not allowed in the High Preservation Area of declared Wild River areas (there are currently no feedlots on Cape York Peninsula anyway). The Cape York Peninsula Heritage Act 2007 provides for 75 year pastoral leases, if the owner opts into the "Area of International Significance".
Plantation Timber		Native vegetation cannot be cleared to establish new plantations, however there are special exemptions for small-scale tree clearing for Indigenous communities under the Cape York Peninsula Heritage Act 2007, which could allow for plantation establishment (with the caveat that the timber is not used for woodchip export). Regulation of plantations established on cleared land relate primarily to some control of agricultural chemicals.
Renewable Energy Infrastructure		Regulation for this type of infrastructure (wind farms, etc) relate to sensible requirements for vegetation clearing, a sensible setback from watercourses and reaching the low bar set by the Federal Environmental Protection and Biodiversity Conservation Act 1999.
Service Industries (Buildings)		There are few regulatory constraints to this industry, other than some sensible requirements relating to vegetation clearing, effluent control, and a sensible setback from watercourses.
Tourism (Building and Campsites)		There are few regulatory constraints to this industry, other than some sensible requirements relating to vegetation clearing, effluent control, and a sensible setback from watercourses. It could be strongly argued that the industry is enhanced by the protection of natural and cultural resources.

KEY: ■ Few regulatory constraints ■ Moderate regulatory constraints ■ Tight regulatory constraints

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Front page image: Fruit Bat Falls on Cape York Peninsula, by Kerry Trapnell. Contributors authors of this report series are Glenn Walker, Tim Seelig, Anthony Esposito, Lyndon Schneiders, Kerryn O'Connor and Janina Jones



Protecting Rivers, Supporting Communities

A report series by The Wilderness Society for the House of Representatives Economics Committee's *Inquiry into issues affecting Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010*

Cape York Peninsula Policy Settings

Report 4 of 6 – Feb 2011



Summary

This report provides an overview of the relevant policy settings for Cape York Peninsula, including key legislation and agreements that have sought to resolve long-standing tensions and competing visions over the future of the region. A brief summary of each section of this report is as follows:

Reconciling Competing Visions: Reconciling competing visions for land use and sustainable development on Cape York Peninsula has occupied the minds of the local community, policy makers and decision makers since the mid 1980's. There is now in place considerable dedicated enabling legislation and policy frameworks specific to Cape York Peninsula at the state level to support sustainable development, conservation and land justice.

Cape York Heads of Agreement: The Cape York Heads of Agreement (Heads of Agreement) was signed by conservation, Indigenous and pastoral parties in 1996 and by the Queensland Government in 2001. It addressed issues of economic development, resolution of native title issues, Indigenous advancement and conservation in the region.

Cape York Peninsula Heritage Act 2007: The Act was designed to resolve the problems of the Cape York Heads of Agreement and ongoing conflict surrounding Wild Rivers and laws controlling land clearing. The Act facilitates both the advancement of work towards recognising and protecting the region's World Heritage values, and also the capacity to undertake sustainable economic activities in support of Indigenous development. Importantly, the Act confirmed the protection of Native Title rights in Wild River declarations, facilitated special Indigenous water reserves, and created a process for Indigenous Community Use Areas to advance Indigenous economic development.

Cape York Tenure Resolution: Created in 2004, the Cape York Tenure Resolution Group process seeks to deliver both land return (and land justice) to Cape York Traditional Owners and the creation of new National Parks (Cape York Peninsula Aboriginal Land) to protect high conservation value areas in the region. So far 1,546,849 hectares of land have been acquired for conservation and cultural outcomes since 1994, with 575,000 hectares of new National Parks created, and 617,000 hectares converted to Aboriginal tenure (of which 90,000 hectares is subject to a nature refuge agreement) through the Tenure Resolution Group process.

Other Legislation and Policy: There are several other pieces of other legislation which either relates to or focus exclusively on Cape York Peninsula. These include: the *Family Responsibilities Commission Act 2008*; the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* and the *Alcan Queensland Pty. Limited Agreement Act 1965*; a suite of welfare reform, education and social policy initiatives, and alcohol management laws. In addition, the Queensland and Commonwealth Governments provide significant public funding to the Cape York Institute and Balkanu Cape York Development Corporation to undertake a range of related activities.

How this report relates to the Terms of Reference of the Inquiry

This report addresses the following components of the Terms of Reference:

- [The Committee should consider:] existing regulation, legislation in relation to mining and other relevant legislation including the *Wild Rivers Act (Qld) 2005* and the *Environment Protection and Biodiversity Conservation Act 1999*
- [The Committee should consider:] options for facilitating economic development for the benefit of Indigenous people and the protection of the environmental values of undisturbed river systems.
- [The inquiry should pay particular attention to the following:] The nature and extent of current barriers to economic development and land use by people, whether Indigenous or non-Indigenous, including those involved in the mining, pastoral, tourism, cultural heritage and environmental management
- [The inquiry should pay particular attention to the following:] Options for overcoming or reducing those barriers and better facilitating sustainable economic development, especially where that development involves Indigenous people
- [The inquiry should pay particular attention to the following:] The impact of existing environmental regulation, legislation in relation to mining and other relevant legislation on the exercise of native title rights and on the national operation of the native title regime and the impact which legislation in the form of the *Wild Rivers (Environmental Management) Bill 2010* would have on these matters

Reconciling Competing Visions

The reconciliation of competing visions for land use and sustainable development on Cape York Peninsula has occupied the minds of the local community, stakeholders, policy makers and decision makers since the mid 1980's, with a range of initiatives being developed seeking to address land use and ownership, poverty and disadvantage, education and health, environmental protection and economic development. This has intensified over the last five years or so, with Government's investing significant public funding, legislative responses and policy effort aimed at supporting local communities and addressing major challenges.

In the context of the current Parliamentary Inquiry there may be a perception that what the Cape needs is a set of dedicated legislative and/or policy instruments to resolve the vast array of complex and competing issues. The reality is that there are already considerable dedicated enabling legislation and policy frameworks specific to Cape York Peninsula at the state level to support sustainable development, conservation and land justice. It is important to have a clear understanding of what legislation, policy and agreements already exist when it comes to Cape York Peninsula, as there have been numerous attempts to address major policy challenges as well as mediate competing agendas and resolve policy conflict.

However, there are outstanding steps in fully realising the goals and potential of some of these, including ensuring they are fully implemented and supported (both in principle and policy) by the Federal and Queensland Governments and the regional Indigenous organisations, who are publicly funded to deliver Cape York Peninsula policy and land use initiatives. And as Report 5 of this submission indicates, there is an absence of a clear sustainable economic plan for Cape York Peninsula as a remote region where 'mainstream' markets and economic conditions do not generally exist.

Cape York Heads of Agreement

The first major attempt at reconciling competing visions for Cape York Peninsula was the Cape York Heads of Agreement (Heads of Agreement), signed in February 1996 by the Cape York Land Council, the Peninsula Regional Council of the Aboriginal and Torres Strait Islander Commission, the Cattlemen's Union of Australia, the Australian Conservation Foundation and The Wilderness Society, with the Queensland Government becoming a party in 2001.

This was developed in response to escalating conflict over the future of region, as well as some emerging areas of common interest between various interests. Among these triggers include the pastoral sector's approach to native title rights and conservation, and questions of how conservation and Indigenous land justice would coexist. The latter was particularly relevant on the back of highly successful cooperative work from Indigenous and conservation groups (including the Cape York Land Council and The Wilderness Society) to secure the protection of Indigenous homelands for the dual purpose of conservation and return to Traditional Owners.

The Heads of Agreement was also developed in tandem with a major land use planning process, the Cape York Peninsula Land Use Study/Strategy (CYPLUS), overseen by the Commonwealth and Queensland Governments and the local community. This included policy development on land tenure reform, and emergent recognition of the extensive World Heritage values (natural and cultural) present on Cape York Peninsula (see Abrahams et al 1995).

The extraordinary nature of Cape York Peninsula

Cape York Peninsula is home to one third of Australia's mammal species; a quarter of the frog and reptile species; and half of the country's known bird species. Its intact landscapes and connected habitats include tropical rainforest, wild rivers, open forest and woodlands, grasslands, white sand dune country, mangroves, and fringing coral reefs. For this reason the protection and management of this special region has been a central consideration in the Cape York Peninsula Land Use Study/Strategy, and the Cape York Peninsula Heads of Agreement.

"...there are already considerable dedicated enabling legislation and policy frameworks specific to Cape York Peninsula at the state level to support sustainable development, conservation and land justice."

The core principles negotiated in the Heads of Agreement were:

- Agreement between parties to work together and with Governments to reach mutually beneficial outcomes;
- Recognition that competition over land use and resolution of native title issues would best be achieved through goodwill negotiations, rather than litigation;
- Recognition of the outstanding natural and cultural conservation values of the region, including World Heritage values, and the need to ensure protection of these values; and
- Recognition of the need for sustainable development opportunities.

It is clear that the Heads of Agreement parties understood that environmental protection was a primary responsibility of Government:

“The parties acknowledge that there exist on Cape York Peninsula, areas of significant conservation and heritage value encompassing environmental, historical and cultural features, the protection of which is the responsibility of State and Federal Governments in conjunction with the parties” (Clause 3)

And that this would lead to the identification and protection of areas of national and international significance:

“The parties agree that areas of high conservation and cultural value shall be identified by a regional assessment process according to objective national and international criteria. There shall be an independent review acceptable to all parties in the case of dispute as to whether the values are consistent with the criteria. Where such areas are identified, the landholder shall enter into appropriate agreements to protect the area under State or Commonwealth provision which may include World Heritage listing. As part of such agreements, funds shall be provided for management of the area, monitoring of agreements and equitable economic and social adjustment.” (Clause 13)

In 2001, the Queensland Government commissioned a report in response to clause 13 of the Heads of Agreement. The commissioning of this report was endorsed and supported by the parties to the Agreement. This report, *The Natural Heritage Significance of Cape York Peninsula* (Mackey et al 2001), identified the health and relationship between the rivers, groundwater and wetlands of Cape York Peninsula as being key to maintaining the ecological integrity of the region and as a value of outstanding conservation significance. The identification and protection of the outstanding conservation significance of the vast network of river systems on Cape York Peninsula was one key recommendation of the report.

Negotiations Break Down

From 1996, parties to the Heads of Agreement met regularly to discuss progress in the implementation of the principles and the responses of both the Queensland and Commonwealth Governments to the Agreement. The decision in 2001 of the Queensland Government to become a formal party to the Heads of Agreement heralded an era of high level negotiations between the parties in support of the implementation of the principles of the Agreement. These negotiations were facilitated by Mr Rick Farley, who had assisted the negotiation of the original Heads of Agreement in 1996.

“The negotiations made some progress but were bedevilled by a lack of clear and agreed implementation agenda, and disagreement between the parties about fundamental issues, in particular opposition by pastoral interests for the control and regulation of broad scale land clearing across key regions on Cape York Peninsula.”

The negotiations made some progress but were bedevilled by a lack of clear and agreed implementation agenda, and disagreement between the parties about fundamental issues, in particular opposition by pastoral interests for the control and regulation of broad scale land clearing across key regions on Cape York Peninsula. The negotiations formally broke down when Mr Noel Pearson stormed out of a meeting of the non-government parties to the Agreement in response to the pastoral representative's failure to support a compromise position on land clearing issues.

As a result of this breakdown, the Queensland Government reconstituted a negotiation forum which included three Government Ministers, and representatives of conservation groups (Australian Conservation Foundation and The Wilderness Society) and Indigenous groups (Cape York Land Council and the Balkanu Cape York Development Corporation). These groups formed the Cape York Tenure Resolution Implementation Group (explained later in this report).

Following the 2004 Queensland Election, the Tenure Resolution Group discussed Queensland Government policy initiatives including the state wide ban of broad scale land clearing of remnant vegetation, and the protection of Wild Rivers.

However, by 2006, the Cape York Land Council and Balkanu had commenced a public campaign against the Wild Rivers and land clearing initiatives. In response, the Queensland Government convened a new round of negotiations between the parties, and expanded to include mining and pastoral interests, and local government, to resolve these outstanding issues. This led to the development of the *Cape York Peninsula Heritage Act 2007*.

Cape York Peninsula Heritage Act 2007

The Cape York Peninsula Heritage Act 2007 (Heritage Act) was developed to resolve the problems that had plagued the implementation of the Heads of Agreement. The negotiations were initially proposed by Noel Pearson and supported by conservation groups. These negotiations involved a series of bilateral negotiations between competing interests. In a sense, its development represented a dramatic evolution of the Heads of Agreement, and created an amended set of processes for the negotiation and implementation of conservation and development on Cape York Peninsula.

“This new legislative framework is a step in the right direction. It provides indigenous communities with the key to the door when it comes to finding real jobs and pursuing enterprise” – Noel Pearson, 2007

The formulation of the legislation was driven by the former Director-General of the Premier's Department in Queensland, Ross Rolfe, and involved full participation of the Cape York Land Council, Balkanu and Noel Pearson, mining and pastoral interests, and The Wilderness Society and the Australian Conservation Foundation. It was a negotiated outcome, based on a series of bilateral dialogues and consultations, and subsequent agreement.

The Cape York Peninsula Heritage Act 2007

The objects of the Heritage Act are:

- (a) to identify significant natural and cultural values of Cape York Peninsula;
- (b) to provide for cooperative management, protection and ecologically sustainable use of land, including pastoral land, in the Cape York Peninsula Region;
- (c) to recognise the economic, social and cultural needs and aspirations of indigenous communities in relation to land use in the Cape York Peninsula Region; and
- (d) to recognise the contribution of the pastoral industry in the Cape York Peninsula Region to the economy and land management in the region.

These objects are to be achieved primarily by providing for:

- (a) the declaration of areas of international conservation significance;
- (b) the cooperative involvement of landholders in the management of the natural and cultural values of Cape York Peninsula;
- (c) the continuance of an environmentally sustainable pastoral industry as a form of land use in the Cape York Peninsula Region;
- (d) the declaration of indigenous community use areas in which indigenous communities may undertake appropriate economic activities; and
- (e) the establishment of committees to advise the environment Minister and vegetation needs management Minister about particular matters under this Act.

The Heritage Act led to amendments:

- to the *Vegetation Management Act 1999* concerning tree clearing for Indigenous communities;
- to the *Wild Rivers Act 2005* to clarify and confirm that the Act is not intended to affect native title;
- to the *Water Act 2000* to provide for specific Indigenous water reserves in declared Wild River areas; and
- to the *Nature Conservation Act 1992* regarding the creation of a model of National Park tenure and management on Cape York Peninsula founded in Aboriginal ownership of the land.

Indigenous Community Use Areas

The Heritage Act legislates a process to allow some areas of Cape York Peninsula to be declared “Indigenous Community Use Areas” (ICUAs), following an assessment and a decision by the Minister responsible for native vegetation management (currently the Minister for Natural Resources and Water). This measure was an important initiative to enable Indigenous development, and a major concession by conservation groups regarding vegetation management in Queensland. It was designed to work in combination with the other sustainable development features of the Heritage Act, and the Indigenous water reserves provided via Wild River declarations – the first statutory Indigenous water reserves in the country.

“Apart from these very important ecological and sensible parameters, there is nothing in the Heritage Act that stops or hinders development on Cape York Peninsula outside of Areas of International Conservation Significance.”

ICUAs may involve vegetation clearing, subject to a special Cape York Peninsula code under the *Vegetation Management Act 1999*. The Heritage Act outlines the ICUA process: the applicants for a development in an ICUA must show that allowable vegetation clearing is necessary and that alternative locations are not available. Any proposed clearing for development must also be “of a minor nature” (such as small area for farming), and must “not have a significant impact on the natural values of the area”. There are specific restrictions on the vegetation clearing if it involves an “endangered” regional ecosystem, an “of concern” regional ecosystem, or planting a high risk species or trees to make woodchips for export.

Apart from these very important ecological and sustainability parameters, there is nothing in the Heritage Act that stops or hinders development on Cape York Peninsula outside of Areas of International Conservation Significance (see below). The importance of this agreed initiative is that it constructed a framework for genuinely sustainable development, one that also preserves the extraordinary natural and cultural values of the region, which alone are the basis for significant economic opportunities. It clearly advanced this framework in a context of reconciling various rights and interests.

Areas of International Conservation Significance

The concept of “Areas of International Conservation Significance” (AICS) under the Heritage Act was designed to acknowledge that Cape York Peninsula contains extensive and world class natural and cultural values, which should be assessed under World Heritage criteria and declared spatially, as a precursor to a nomination for World Heritage listing of the region. AICS provisions were based on an expectation of World Heritage nomination processes being advanced. The provisions in the Act include the opportunity for pastoral lease holders to extend their lease to 75 years if they agree to become part of the AICS (the maximum lease term is currently 50 years).

Special Committees

The Heritage Act established two Committees, the Cape York Peninsula Scientific and Cultural Advisory Committee (SCAC), and the Cape York Peninsula Regional Advisory Committee (RAC - made up of 50% Indigenous interests, as well mining, agricultural, conservation and local government representatives), to provide advice to the Queensland Government on matters arising from the Act.

To date, the bulk of the work undertaken by these Committees has concerned the AICS process, and how this relates to the development of a World Heritage nomination (including the placing of Cape York Peninsula on the National Heritage Register, and the tentative list for World Heritage). This work is now being conducted under the auspices of a SCAC and RAC endorsed joint Commonwealth and State Government “road map” for progressing World Heritage.

Other business discussed by the Committees includes matters related to ICUAs. However, it remains unclear how advanced any such ICUA proposal is, and what effort (if any) has been put into formalising the necessary approval processes by those closely connected to the Heritage Act negotiations and final agreements, such as the Cape York Land Council or Balkanu Cape York Development Corporation, in support of local Indigenous communities.

Aboriginal-owned National Parks and Joint Management

A breakthrough reform enabled by the Heritage Act is the negotiation and creation of a new form of National Park - one with an underlying Aboriginal land tenure and guarantee of joint management arrangements between the relevant Traditional Owners and the Queensland Government. This means that all new National Parks created on Cape York Peninsula will have joint management arrangements. The Queensland Government is also now going through a process of converting existing National Parks on the Cape to this more progressive, and Indigenous-centred form of protected area.

An Intended Settlement to Competing Agendas for Cape York Peninsula

The Heritage Act delivered the potential for sustainable development and conservation for a region of international significance, and a sensible political compromise (for example, conservation groups agreed to relaxing vegetation-clearing laws in certain areas; Indigenous leaders accepted that Wild River nominations on Cape York Peninsula would proceed). It was intended by the parties that the legislation represent a settlement of competing agendas for Cape York Peninsula as first identified through the Heads of Agreement and compounded by the Wild Rivers debate.

“The original wild rivers legislation that threatened to frustrate indigenous economic development will be amended to protect native title rights and interests and to provide for mandatory water allocations for indigenous communities in each of the catchments affected by a wild river declaration” – Noel Pearson, 2007

The Wilderness Society welcomed the Cape York Peninsula Heritage Bill’s introduction, saying it:

“(The Bill provides) formal recognition of Native Title in the Wild Rivers Act; and an Indigenous economic and employment package, including confirmation of Indigenous ranger positions and support for Indigenous arts, culture and tourism enterprises. Achieving agreement on conservation and ecologically sustainable land use on Cape York has long been the objective of The Wilderness Society. Today’s announcement is a breakthrough that provides a new cooperative framework for the current and future needs of the region....”

Similarly, Noel Pearson in an opinion piece for The Australian at the time said,

“...the Cape York Peninsula Heritage Bill ... represents our best opportunity to strike a balance between conservation and development for the future of this region. This law has the potential to ease Cape York people’s struggle to reconcile conservation and development...”

“The new law provides for joint management of Cape York’s national parks between the state Government and the traditional owners. The original wild rivers legislation that threatened to frustrate indigenous economic development will be amended to protect native title rights and interests and to provide for mandatory water allocations for indigenous communities in each of the catchments affected by a wild river declaration. Indigenous communities will be able to make applications for vegetation clearing on Aboriginal land for sustainable agriculture, aquaculture and animal husbandry.

“This new legislative framework is a step in the right direction. It provides indigenous communities with the key to the door when it comes to finding real jobs and pursuing enterprise.” (Pearson 2007)

Indeed, the finalisation of the bill and its introduction was welcomed by representatives of Indigenous, mining, pastoral and conservation interests and the Queensland Government as a breakthrough and the best opportunity to resolve growing conflict around Wild Rivers and development issues.



Press conference at tabling of the *Cape York Peninsula Heritage Bill*, 7th June, 2007. Next to then Premier Peter Beattie are Noel Pearson (left) and Lyndon Schneiders from The Wilderness Society (right). Also present are several Queensland Government Ministers and MPs, Gerhardt Pearson (Balkanu), Richie Ah Mat (Cape York Land Council), the Director-General of the Department of Premiers and Cabinet, Anthony Esposito (The Wilderness Society) and representatives of the Queensland Resources Council and AgForce.

In response to recent media commentary of Wild Rivers, former Premier Beattie published an article on the Cape York Peninsula Heritage Act negotiations, which stressed that:

“The broad principles of this legislation were developed in consultation with the Cape York Land Council, the Wilderness Society, Agforce and the Queensland Resources Council. The act provides for the transfer of underlying ownership of existing national parks to traditional owners, a relaxation of restrictions on land clearing to facilitate development on indigenous land around communities and a sound basis for managing any future area identified for World Heritage nomination.”

“With respect to wild rivers, the new act mandated that water allocations be made available “for the purpose of helping indigenous communities achieve their economic and social aspirations”. It also confirmed that the Wild Rivers Act 2007 does not affect or override native title rights nor does it control the exercise of those rights. In other words, my government was committed to indigenous economic development in the Cape in a balanced and environmentally sustainable way.” (Beattie 2010)

Outstanding implementation issues with the Heritage Act

The Heritage Act facilitates both the advancement of work towards recognising and protecting the region’s World Heritage values, and also the capacity to undertake sustainable economic activities in support of Indigenous development. Work is now underway, albeit slowly, to formalise the recognition of AICS on Cape York Peninsula, and progress a World Heritage nomination development roadmap.

Other outstanding tasks include completing the ICUA code, and government and regional organisations’ facilitation of economic activities, which were part of the package.

Cape York Tenure Resolution

The land tenure reform process for Cape York Peninsula, which became the Cape York Peninsula Tenure Resolution Implementation Group initiative, emerged from the Heads of Agreement. Created in 2004, the Tenure Resolution Group process seeks to deliver both land return (and land justice) to Cape York Traditional Owners and the creation of new National Parks (with underlying Aboriginal tenure) to protect high conservation value areas on the Cape. It essentially evolved from former Queensland Premier Wayne Goss’ “east coast wilderness zone”, which began as compulsory land acquisitions and later became a voluntary program.

Properties are purchased or acquired voluntarily, and Traditional Owner consultations and Indigenous Land Use Agreements under the *Native Title Act 1993* are used to convert the tenure of the land on a roughly 50% Aboriginal Freehold, 50% Aboriginal owned and jointly managed National Parks basis. Land Trusts are established and Indigenous Management Agreements created to assist with ownership and management issues. This model will also be applied to all the existing National Parks in Cape York Peninsula resulting in a vast, Aboriginal-owned conservation estate.

The Tenure Resolution Group group is made up of three Queensland Government Ministers, Cape York Land Council, Balkanu Cape York Development Corporation, the Wilderness Society and the Australian Conservation Foundation.

Key achievements of the Tenure Resolution Group:

The Tenure Resolution Group process on Cape York Peninsula is unparalleled anywhere in Australia. Nowhere has there been such a significant and successful program of land return to Traditional Owners combined with conservation outcomes. The key achievements of the process are below (oringal property names are given with approximate area of land):

- Aug 2005: Marina Plains - 6,800 ha (950 ha Aboriginal freehold land; 5,900 ha extension to Lakefield National Park)
- Dec 2005: Kalpowar - 400,000 ha (200,000 ha Aboriginal freehold land; 200,000ha new Jack River National Park)
- Aug 2006: Green Hills - 9,700 ha (1,700 ha Aboriginal land; 8,800 ha new Annan River National Park)
- Nov 2006: Melsonby - 19,700 ha (10,710 ha Aboriginal freehold land; 8,990 ha new Melsonby (Gaarraay) National Park)
- July 2008: Running Creek and Lilyvale - 110,500 ha (74,940 ha Aboriginal freehold land; 35,560 ha new Lama Lama Aboriginal National Park)
- Aug 2008: McIlwraith and Mt Croll - 375,000 ha (856 ha Aboriginal freehold title; 160,000 ha new Kulla (McIlwraith Range) Aboriginal National Park)
- Oct 2009: Mitchell-Alice Rivers National Park - 38,000 ha (38,000 ha conversion to new Errk Oykangand Aboriginal National Park)
- May 2010: Kalinga and Mulkay - 79,500 ha (37,00 Aboriginal freehold land; 42,500 conversion to new Alwal Aboriginal National Park)
- Oct 2010: Mungkan Kaanju National Park - 457,000 ha (75,500 ha Aboriginal freehold land (via excision of National Park, with nature refuge covering 32,200 ha); conversion of entire area to Aboriginal National Park)
- There are many additional properties to be returned to Traditional Owners as part of the process, including a number of existing National Parks due for conversion into Aboriginal National Parks in the coming years.
- **In total 1,546,849 hectares of land have been acquired for conservation and cultural outcomes since 1994, with 575,000 hectares of new National Parks created, and 617,000 hectares converted to Aboriginal tenure (of which 90,000 hectares is subject to a nature refuge agreement) through the Tenure Resolution Group process**

Other Legislation and Policy

There are several other pieces of other legislation which either relate to or focus exclusively on Cape York Peninsula. These include:

- *The Family Responsibilities Commission Act 2008*, which established the Family Responsibilities Commission. It operates in the Cape York Peninsula communities of Aurukun, Coen, Hope Vale and Mossman Gorge and is an initiative of the Queensland and Australian Governments and the Cape York Institute
- *The Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* and the *Alcan Queensland Pty. Limited Agreement Act 1965*. These co-called “Special Agreement Acts” grant extraordinary rights to resources in certain parts of Cape York Peninsula, including almost unrestricted allocation of water including from river systems declared under the Wild Rivers Act 2005.
- A suite of welfare reform, education and social policy initiatives, largely driven by the Queensland and Australian Governments and the Cape York Institute
- Significant public funding packages to the Cape York Institute and Balkanu Cape York Development Corporation to undertake a range of activities, presumably including the facilitation and promotion of sustainable economic development in the region, although it is unclear what has actually been achieved or delivered in relation to sustainable economic development plans, projects, or businesses.

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Front page image: Fruit Bat Falls on Cape York Peninsula, by Kerry Trapnell.
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THE WILDERNESS SOCIETY

Protecting Rivers, Supporting Communities

A report series by The Wilderness Society for the House of Representatives Economics Committee's *Inquiry into issues affecting Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010*

Sustainable Development on Cape York Peninsula

Report 5 of 6 – Feb 2011



Summary

This report provides a basic analysis of sustainable development potential on Cape York Peninsula, with an emphasis on opportunities for Indigenous people. This includes baseline available demographic and labour force data; a snapshot of the private sector including small business; and the emerging (and potentially substantial) opportunities in the industries of tourism, land management and other environmental services. A brief summary of each section of this report is as follows:

Demographic and Labour Force Context of Cape York Peninsula: The labour force data for Cape York Peninsula (taking into account this is more indicative than precise), demonstrates that in 2006, the majority of working Indigenous people on Cape York Peninsula were employed in “Public Administration and Safety” (58%) and “Health Care and Social Assistance” (11%). The largest industry for non-Indigenous people was “Manufacturing” (19%), in which only 4% of Indigenous people worked. Mining employed very few Indigenous people (1%). In 2009, indicative figures across Cape York indicated total unemployment of some 914 persons, a rate of 12.6% (as a weighted average).

Private Sector Economic Activity and Development: There are a range of private sector small and medium enterprises operating in or near Cape York Peninsula’s Indigenous settlements, which show significant potential for expansion. One of the most promising areas for expansion, as outlined in the *Cape York Indigenous Employment Strategy 2005* commissioned by the Commonwealth and Queensland Governments, is tourism, with the capacity to deliver up to one thousand jobs. According to this report, tourism would out-scale all other forms of employment combined, providing huge potential for Indigenous economic opportunity on Cape York Peninsula.

Emerging Sustainable Industries: Cape York Peninsula maintains extraordinary ecological and cultural values, which provide a huge natural competitive advantage for the region. There are a number of seriously under-realised employment opportunities in areas such as tourism, land management and carbon initiatives (particularly savanna burning). There is an urgent need for Government support and capacity-building in these areas.

How this report relates to the Terms of Reference of the Inquiry

This report addresses the following components of the Terms of Reference:

- [The Committee should consider:] options for facilitating economic development for the benefit of Indigenous people and the protection of the environmental values of undisturbed river systems
- [The inquiry should pay particular attention to the following:] The nature and extent of current barriers to economic development and land use by people, whether Indigenous or non-Indigenous, including those involved in the mining, pastoral, tourism, cultural heritage and environmental management
- [The inquiry should pay particular attention to the following:] Options for overcoming or reducing those barriers and better facilitating sustainable economic development, especially where that development involves Indigenous people
- [The inquiry should pay particular attention to the following:] The potential for industries which promote preservation of the environment to provide economic development and employment for Indigenous people

Demographic and Labour Force Context of Cape York Peninsula

Labour Force and Employment Data

Collecting accurate demographic and labour force data in remote areas with high proportions of Indigenous residents is well known to be problematic and generally undercounted. The Australian National University’s Centre for Aboriginal Economic Policy and Research (CAEPR) calculated Cape York Peninsula’s total Indigenous estimated residential population in 2006 as 7726 compared to the non-indigenous ERP as 5887. CAEPR’s work on population growth rates has estimated that Cape York Peninsula’s Indigenous population will rise to 9311 by 2016 and 11,924 by 2031 (Biddle and Taylor 2009).

The following tables are taken from the Australian Bureau of Statistic’s 2006 Census, Indigenous Community Profiles. While these are now nearly five years old, and will be replaced by new data from the 2011 Census, they provide an indicative picture of employment, labour force status and other useful statistics.

A note must be made here on data accuracy issues. 2006 Indigenous census responses to questions about labour force status are confounded by the fact that many were working participants in Community Development Employment Projects (usually part time work as an alternative to receiving unemployment benefits and paid at a similar rate). Thus some CDEP participants classified themselves as “employed” and others considered themselves to be “unemployed” when responding to the census. It is not clear if the estimates of the number of unemployed people provided in the 2009 table below include or exclude CDEP participants.

“Not in the Labour Force” includes working age people who are students, sole parents, people with health issues or disabilities, older people, partners of those in the labour force, and also “discouraged job seekers” – i.e. those who have given up seeking work, or who have difficulty accessing unemployment benefits. The percentage of working age people identifying as being in this category is generally much higher for Indigenous people than for non-indigenous people. The figures also mask the extent of underemployment.

Employment by Industry Cape York Peninsula 2006

	Indigenous		Non-Indigenous		Indigenous as % of total sector	Indigenous as % of total sector
Agriculture, forestry & fishing	89	4%	196	7%	30%	1.6%
Mining	19	1%	170	6%	10%	0.3%
Manufacturing	108	4%	563	19%	16%	2.0%
Electricity, gas, water & waste services	5	0%	27	1%	16%	0.1%
Construction	55	2%	241	8%	19%	1.0%
Wholesale trade	3	0%	30	1%	9%	0.1%
Retail trade	35	1%	235	8%	13%	0.6%
Accommodation & food services	26	1%	241	8%	10%	0.5%
Transport, postal & warehousing	11	0%	96	3%	10%	0.2%
Information media & telecommunications	4	0%	15	1%	21%	0.1%
Financial & insurance services	-	0%	12	0%	0%	0.0%
Rental, hiring & real estate services	-	0%	38	1%	0%	0.0%
Professional, scientific & technical services	16	1%	38	1%	30%	0.3%
Administrative & support services	43	2%	62	2%	41%	0.8%
Public administration & safety	1,475	58%	335	11%	81%	26.7%
Education & training	88	3%	259	9%	25%	1.6%
Health care & social assistance	280	11%	232	8%	55%	5.1%
Arts & recreation services	14	1%	25	1%	36%	0.3%
Other services	6	0%	76	3%	7%	0.1%
Inadequately described/Not stated	246	10%	80	3%	75%	4.5%
TOTAL	2,523	100%	2,971	100%		

Figures are for persons aged 15 years and over. Source: ABS 2006a.

Labour Force Status Cape York Peninsula 2006

	Non-Indigenous		Indigenous	
	Persons	%	Persons	%
Employed, worked full-time	2,114	43%	678	13%
Employed, worked part-time	605	12%	1,094	21%
Employed, away from work	248	5%	173	3%
Unemployed, looking for full-time work	74	2%	54	1%
Unemployed, looking for part-time work	23	0%	60	1%
Not in the labour force	822	17%	1,499	28%
Not stated	72	1%	108	2%
Not applicable	966	20%	1,601	30%
TOTAL	4,924	100%	5,267	100%

Figures are for persons aged 15 years and over. Source: ABS 2006b. *As identified in data.

Estimates of Unemployment Cape York Peninsula (June Quarters)

Area (SLA)	Unemployment		2005	2006	2007	2008	2009
	persons	no.					
Northern Peninsula Area (R) - Umagico (SLA)	persons	no.	5	6	5	8	9
	rate	%	4	5.3	3.9	6	8.2
Aurukun (S) (SLA)	persons	no.	20	27	20	28	52
	rate	%	4.1	5.6	3.9	5.3	12.3
Weipa (T) (SLA)	persons	no.	51	75	62	91	193
	rate	%	3.5	5.1	4	5.7	9.3
Cook (S) (SLA)	persons	no.	91	124	96	137	336
	rate	%	4.7	6.5	4.7	6.5	17
Hope Vale (S) (SLA)	persons	no.	19	25	19	28	95
	rate	%	4.7	6.5	4.7	6.5	19
Kowanyama (S) (SLA)	persons	no.	53	56	40	37	69
	rate	%	10.2	10.3	7.3	6.8	12
Lockhart River (S) (SLA)	persons	no.	14	19	15	21	30
	rate	%	4.7	6.5	4.7	6.5	12
Mapoon (S) (SLA)	persons	no.	5	6	5	7	13
	rate	%	4.7	6.5	4.7	6.5	9
Napranum (S) (SLA)	persons	no.	18	24	18	26	31
	rate	%	4.7	6.5	4.7	6.5	9.2
Pormpuraaw (S) (SLA)	persons	no.	32	34	24	22	45
	rate	%	10.2	10.3	7.3	6.8	12.4
Northern Peninsula Area (R) - Injinoo (SLA)	persons	no.	7	10	8	12	19
	rate	%	4	5.3	3.9	6	8.3
Northern Peninsula Area (R) - New Mapoon (SLA)	persons	no.	6	8	6	10	13
	rate	%	4	5.3	3.9	6	8.4
Northern Peninsula Area (R) - Seisia (SLA)	persons	no.	2	3	3	4	9
	rate	%	4	5.3	3.9	6	8
Total number of unemployed	persons	no.	323	417	321	431	914
Weighted average rate of unemployment	rate	%	5.0%	6.5%	4.7%	6.2%	12.6%

Source: ABS 2009.

Interpretation of Data

For 2006, employment and labour force data indicate that Indigenous people of working age on Cape York had much lower levels of formal full time and part time employment than non-Indigenous people. Despite data accuracy issues described above, data from the 2009 ABS National Regional Profile for Cape York Statistical Local Areas appears to confirm that even with a big increase in recorded unemployment in 2009 over the previous year, the total number of unemployed Aboriginal people on the Cape was less than one thousand. Hope Vale had the highest rate of unemployment, at 19%.

“The 2006 census indicates that the mining industry in Cape York Peninsula employed very few Indigenous people – only 19 compared to 170 non-indigenous mine workers ... Although the mining industry desires to significantly expand operations in the western Cape, it is unlikely that actual Indigenous employment will significantly increase should this occur.”

Indigenous employment by occupations and industry on Cape York Peninsula is also very different from non-Indigenous people. In 2006, the majority of working Indigenous people on Cape York Peninsula were employed in “Public Administration and Safety” (58%) and “Health Care and Social Assistance” (11%). By comparison, only 11% of the non-Indigenous workforce was employed in “Public Administration and Safety”. The largest industry for non-Indigenous people was “Manufacturing” (19%), in which only 4% of the Indigenous workforce were employed.

The 2006 census indicates that the mining industry in Cape York Peninsula employed very few Indigenous people – only 19 compared to 170 non-indigenous mine workers. Mining is also relatively insignificant as a source of employment in Cape York Peninsula, employing only 3.4% of the total employed labour force. Although the mining industry desires to significantly expand operations in the western Cape, it is unlikely that actual Indigenous employment will significantly increase should this occur.

Private Sector Economic Activity and Development

The employment data demonstrate that the largest single sector of employment on Cape York Peninsula is the public sector, including health services, education, police, and administration. These are essential public services, funded and operated by government or non-government agencies, and will remain and grow into the future with both growing populations, and greater policy focus on “Closing the Gap”.

“Some of the most disadvantaged Indigenous communities on Cape York are located close to major mining areas, suggesting that the benefits to those communities of having a mine nearby is limited”

Compared to these areas of employment, larger scale private sector economic activity on Cape York Peninsula is currently relatively limited. The pastoral sector is small, and although mining is presently one of the few examples of private employers, mining is overall a small source of employment in the region. Indeed, in terms of jobs, wealth and addressing Indigenous economic disadvantage, it is questionable that mining has contributed much at all for local communities either in Cape York Peninsula or in other mine sites around the country.

Some of the most disadvantaged Indigenous communities on Cape York Peninsula are located close to mining areas, suggesting that the benefits to those communities of having a mine nearby is limited. A key example here is the community of Napranum, which is situated at the door step of the world’s largest bauxite mines (operated by the multi-national giant Rio Tinto). Unfortunately, fifty years of intense resource extraction appears to have delivered little to this community in socio-economic terms compared with other communities located far away from mining activities.

Given that such mines generate huge incomes for the companies that own them, the idea of a “trickle-down” effect from mining to individual Indigenous people on the Cape does not hold water. It is important to note that the mining operations on Cape York Peninsula are not Indigenous-owned or controlled.

Indigenous Small Business

Contrary to common perception, Cape York Peninsula’s Indigenous people do already own and/or operate a plethora of small businesses, such as cafés, butcher shops, bakeries, market gardens, motels, guest houses, boat charters, various eco-tours and cultural tours, retail arts and crafts, vehicle hire, supermarkets and other retail businesses, camp grounds, various training and consultation services, and other businesses that are found in small rural towns of similar population size. Such development is facilitated by various policy programs and legislation, as outlined in Reports 3 and 4 of this submission.

There is potential to increase and expand such small businesses, and various non-government and government assistance exists to support this (eg. Indigenous Business Australia, Indigenous Land Corporation and several Commonwealth and Queensland Government Departments). However, there are some significant difficulties in establishing new small businesses, for example (this is by no means exhaustive):

- Poor infrastructure such as road and telecommunications access;
- Lack of commercial premises to accommodate small businesses, high costs of constructing such premises, and little or no government funding support for such construction;
- Native title, cultural heritage and land-use planning and surveying processes impacting on approval of commercial lease applications; and
- Seasonal/climatic conditions limiting agri-business and tourism businesses.

Wild Rivers and Economic Development

The impacts of Wild River declarations on economic development have been wildly overstated. As demonstrated in Report 2 of this submission, a declaration operates by ensuring a setback of highly destructive development from sensitive waterways and wetlands and regulates the impacts of development in the major parts of the catchment.

Land tenure does not change, and a full range of current activities like grazing, fishing, eco-tourism, land management and mining, can still continue in declared Wild River areas. In addition it provides a water allocation specifically for Indigenous economic and community use - the first such water allocation scheme of its kind in Australia.

There are several difficulties in establishing small businesses on Cape York Peninsula, but Wild Rivers is not one of them. There are currently no examples of an Indigenous-owned business that has been stopped or seriously stifled by a Wild River declaration.

Cape York Indigenous Employment Strategy

While the Commonwealth Department of Families, Housing and Community Services, and Indigenous Affairs is currently working on a broad Indigenous economic development strategy, in 2005 several Commonwealth and Queensland Government Departments worked with Kleinhart-FGI Corporate Advisors and Business Mapping Solutions Pty Ltd to produce the report, *Cape York Indigenous Employment Strategy*. This study assessed current employment levels across a range of private industries and employment areas on Cape York Peninsula, and sought to anticipate the likely levels of employment into the future.

Although it did not take into account significant sectors such as the public service, small business and land management, it does represent a rare attempt at enumerating prospective employment on the Cape and identifying where the future may lie in terms of jobs and economic activity.

The table below summarises the findings for potential jobs growth according to industry:

Future Likely Jobs on Cape York Peninsula by Industry Type

Industry	Future Likely Jobs
Agriculture	overall minimal
Market Gardens	50
Native Foods/ Seed collection Supplementary income	minimal jobs
Native Foods & remedies cultivation & value adding	very early stages, but could facilitated and developed well
Arts and crafts	minimal jobs
Aquaculture	60
Building & Construction	90
Cattle	120
Commercial Fishing	minimal but significant for some communities
Forestry & Timber	250
Mining	200-300
Tourism	700-1000

Source: Kleinhart-FGI and Business Mapping Solutions 2005. It is important to note here that the table omits significant sectors such as the public service, small business and land management.

Tourism is clearly the major prospect outlined in the *Cape York Indigenous Employment Strategy* study, with the estimated capacity to deliver up to one thousand jobs. In fact, tourism would out-scale all other forms of employment combined, providing huge potential for Indigenous economic opportunity on Cape York Peninsula (this opportunity is discussed later in this report).

A major conclusion that can also be drawn from this study is the lack of large-scale “mainstream” market conditions, and the relatively small capacity for industries such as pastoralism and irrigated agriculture to deliver substantial job growth. This is a structural economic consideration. As Professor Jon Altman of the Australian National University notes:

“(The) perceived problem is an absence of significant market or private sector economies. This explains in part why these discrete communities exist and in part why Indigenous people choose to live at them for mainly non-market reasons—because of continuing links with country. But while orthodox economic theory might suggest that Indigenous residents of such communities should migrate elsewhere to engage with the market economy, it is highly contestable how effectively they would compete for employment, owing to historic legacy...”

“...Economic development in such contexts is not just about development for enhanced market engagement, high formal employment and high and growing income. Such options rarely exist in these contexts. Rather, development should be viewed as a process that might enhance Indigenous participation with local, regional and national economies. The nature of economic development will be a function of the precise nature of local and regional economies, rather than of the currently prosperous metropolitan economies of south-east Australia successfully engaging with globalisation.” (Altman 2003: pp.2-3)

Large-scale Irrigated Agriculture Not Suited for Cape York Peninsula

The *Northern Australian Land and Water Science Review 2009* is the most comprehensive and thorough reviews ever conducted into land and water development in northern Australia. Coordinated by CSIRO in collaboration with over 80 of Australia's leading scientists, the Review looked at options for use of land and water in northern Australia and the likely consequences of those uses, for communities, businesses and the environment.

The most telling conclusion of the Review concerned irrigated agriculture in northern Australia, including Cape York Peninsula. It showed that there are major natural constraints to this industry including: highly nutrient poor, fragile, saline and acid sulphate soils dominating the landscape; high risk of flooding, cyclones and prolonged dry periods; and lack of appropriate dam sites, particularly considering extreme evaporation rates and monsoonal nature of the climate.

In addition, the Review argued that the environmental impacts of this type of development poses a high risk, including displacing natural ecosystems of intrinsic as well as cultural and economic value (for example the Review stressed that water flowing through river systems and into the ocean is not “wasted”, but performs a critical role for marine ecosystems, including supporting fishing industries). (CSIRO 2009)

Emerging Sustainable Industries

Land Management and Environmental Services

Conservation and land management is economic development on Cape York Peninsula, contrary to outdated claims that conservation equates to no development and no economic future. This is due to the hard evidence of growing numbers of Indigenous jobs in this sector, combined with the remarkably positive social indicators associated with such programs (see Altman and Larsen 2006; Altman et al 2007; Gilligan 2006).

As Altman et al (2007) argue, the Indigenous estate in Australia contains some of the highest conservation value lands in the country. The careful management of these vast environmental and cultural assets is of benefit to all Australians, and can also provide job opportunities in the following key areas:

- Protected area management (including jointly managed National Parks, nature refuges and Indigenous Protected Areas);
- Weed and feral animal control;
- Water quality management;
- Quarantine and border protection;
- Fisheries management;
- Carbon economy opportunities, particularly concerning savanna fire management (discussed further below); and
- Scientific research and Indigenous ecological knowledge.

The value of this sector is beginning to be realised in some jurisdictions in Australia. For example, Altman et al (2007) note that:

“The Northern Territory Indigenous Economic Development Strategy 2005 identifies natural and cultural resource management as a key sector for economic development. This is representative of the growing recognition, supported by evidence, that Indigenous people living on country and participating in land and sea management activities generate significant environmental, economic and social outcomes at the local, regional and national levels.” (p.37)

A prime example of this type of employment opportunity being realised on Cape York Peninsula is the Indigenous Wild River Ranger program. In the 2006 Queensland state election, the Beattie Government responded to advocacy by The Wilderness Society to create a program of Indigenous Wild River Rangers to compliment Wild River declarations, with the aim of eventually employing 100 Indigenous people.

To date the program has been a huge success, with 35 rangers now employed across Far North Queensland, building nodes of skilled natural resource management workers across the region. The program is based on a community development model – whereby community organisations are funded and resourced to run their own ranger programs, rather than via a direct, Government-controlled program. Not only are the rangers performing a vital environmental service for all Australians, but the program is performing an important social role by providing full-time employment and a beacon of pride for local communities.

Another example of a key program delivering Indigenous jobs and economic development on Cape York Peninsula include the Commonwealth Government's “Caring for our Country” program, which supports local ranger programs and Indigenous Protected Areas. With a World Heritage listing for Cape York Peninsula currently being discussed and considered (see Report 4 of this submission), these sorts of programs are likely to be seriously boosted in the coming years.

It must be noted that there are no publicly available figures totalling the current jobs in this important sector, let alone any coordinated approach to measure future potential growth, and ways in which the Commonwealth and Queensland Government could provide long-term support. This is clearly an area for urgent research and policy attention.

The Carbon Economy

Carbon is stored in vegetation and soils – meaning that the way we manage our landscapes affects the carbon dioxide in the atmosphere and therefore the overall effect of climate change. Fire management, rainfall, the impact of pest species, grazing, large-scale development, and the introduction of human settlements, for instance, all have a significant impact on the fluxes of carbon being held in natural landscapes.

For this reason there is growing interest and scientific research into how natural landscapes could be managed so remote communities can benefit economically from a carbon economy. In other words, managing the carbon released from a natural landscape could provide a significant source of employment and income for Indigenous people.

In a vast region such as Cape York Peninsula, depending on the price on carbon and the accounting system, the variation of the baseline of carbon could be in the order of billions of dollars worth, signifying a significant business opportunity. It is also a potentially cost-effective mitigation strategy for Australia, with the implementation cost lower than many industrial sectors (see Nous Group 2009).

Potential land management activities that could reduce carbon and greenhouse emission output on Cape York Peninsula include weed and feral animal management, de-stocking of cattle in some areas, revegetation of the landscape where available, and management of fire in savanna ecosystems. While these mitigation measures are only just being understood and measured in terms of impact on greenhouse gas emissions, fire management appears to be the most progressed and promising opportunity.

For instance, a program is already underway in the Northern Territory (West Arnhem Land Fire Abatement Project), where the Darwin Liquefied Natural Gas is providing around \$1 million every year for the next 17 years to Traditional Owners of the region to implement a fire burning strategy (see Tropical Savannas CRC 2011). Cape York Peninsula has similar savanna landscapes so is likely to have the same opportunities emerge in the near future.

However, without a clear final date and conditions around baseline and management of greenhouse gas fluxes, it is not entirely clear exactly how this new set of land management drivers will impact on Cape York Peninsula. It must be remembered that there are risks regarding the accounting of land management activities, which the Commonwealth Government is well aware of, and has written to the United Nations Framework Committee on Climate Change (UNFCCC) requesting the ability to “smooth” the impact of “natural disturbances” and other fluxes by averaging out the changes over five or more years.

Above all, Australia needs to set a price on carbon for this fledgling economic opportunity to be fully understood and realised.

“In a vast region such as Cape York Peninsula, depending on the price on carbon and the accounting system, the variation of the baseline of carbon could be in the order of billions of dollars worth, signifying a significant business opportunity”

Tourism

The potential for tourism growth on Cape York Peninsula is simply massive. While there is already a niche market of eco-cultural tours on Cape York Peninsula operated from Cairns, far larger opportunities could be built around either specific protected areas and places of high cultural or natural values (eg rainforests, rivers, rock art), or a large scale approach to protection and promotion region-wide - a World Heritage listing.

As a way of highlighting the economic potential of a World Heritage listing for Cape York Peninsula, it is worth briefly examining how World Heritage areas in Queensland have performed in creating jobs, wealth, investment and tourism activity.

In 2008, Queensland's World Heritage areas (excluding the Great Barrier Reef Marine Park) were estimated to contribute at the state level:

- \$4.15 billion in annual direct and indirect state output or business turnover;
- \$1.85 billion in annual direct and indirect state value added;
- \$1.2 billion in direct and indirect state household income; and
- 24, 225 direct and indirect jobs state wide (Gillespie Economics 2008).

Indeed, the Wet Tropics World Heritage area alone contributed \$2 billion locally, \$3 billion at the state level and just under \$5 billion nationally in output in 2008 from the impacts of visitors, with a further 50% output from value added activities at each level. In terms of direct income, the area generated \$1.3 billion nationally from visitors, supporting 13,351 jobs locally (25,385 jobs nationally) (Gillespie Economics 2008).

“With the global recognition and marketing of a Cape York World Heritage area, Wild River declarations, a world-class walking trail on Cape York, and a rich Indigenous cultural experience, the potential of tourism is highly significant”

In the case of the Great Barrier Reef Marine Park, the figures are even more dramatic. Access Economics were commissioned by the Great Barrier Reef Marine Park Authority to assess the economic value of activity undertaken within the Great Barrier Reef Marine Park (GBRMP) for the 2006-07 financial year. Their report examines the GBRMP's contribution to the Great Barrier Reef Catchment Area (GBRCA). They concluded:

“The total direct and indirect contribution of the GBRMP to the GBRCA is estimated to be just under \$3.6 billion in 2006-07. The figure is larger for Queensland at just around \$4.0 billion. Australia-wide, the contribution is just over \$5.4 billion. These figures correspond with estimated employment contributions, direct and indirect, of 39,700 full time equivalents (FTE) of the GBRMP to the GBRCA. The employment figures for Queensland and Australia are 43,700 and 53,800 respectively. Tourism is by far the largest contributor to economic activity, accounting for 94% of the direct and indirect contribution.” (Access Economics 2008)

Extrapolating these figures to estimate the exact economic potential for a future Cape York Peninsula World Heritage area may be difficult, but one can assume the economic output and numbers of jobs would be substantial, particularly if carefully thought through to maximise indigenous employment opportunities. Indeed the future employment figures for tourism estimated in the Cape York Indigenous Employment Strategy already represent about 1000 jobs, and this is not factoring-in the marketing power of a World Heritage listing (as outlined in Report 4 of this submission, a potential World Heritage nomination for Cape York Peninsula is currently progressing).

One of the most promising of tourism ventures, which would go perfectly “hand-in-hand” with a World Heritage listing, is the push to create a vast “Dreaming Trail” on Cape York Peninsula, as part of Queensland's “Great Walks” network. Initially floated by the Cape York Institute and Balkanu Cape York Development Corporation and supported by the Bligh Government at the 2009 State election, the Wilderness Society understands a feasibility study for the project has now been completed and the next stages of consultation and concept development are underway. Premier Bligh has stated that the project could eventually deliver 1,100 jobs and contribute millions of dollars to the local economy (Bligh 2009). This would make it Far North Queensland's Kokoda Trail.

With the global recognition and marketing of a Cape York World Heritage area, Wild River declarations, a world-class walking trail on Cape York, and a rich Indigenous cultural experience, the potential of tourism is highly significant.

The Natural Competitive Advantage of Cape York Peninsula

Cape York Peninsula is an extraordinary region. Its myriad landscapes, rivers and coastlines, incorporating rainforest, savannah, woodlands, white sand country, wetlands and plains are home to one third of all Australian mammal species and half of our entire bird species, with high species endemism: 264 plant species and 40 different animal species occur only on Cape York Peninsula.

On a damaged planet it is remarkable that the inter-connecting ecosystems of this vast Peninsula remain largely healthy and intact across the whole landscape. Cape York Peninsula is a place where Indigenous peoples' connection to their Country and cultural heritage is active and strong.

Capitalising on these values, including promoting, protecting and managing the region, represents a significant emerging opportunity for Indigenous employment in the region.

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Front page image: Fruit Bat Falls on Cape York Peninsula, by Kerry Trapnell.

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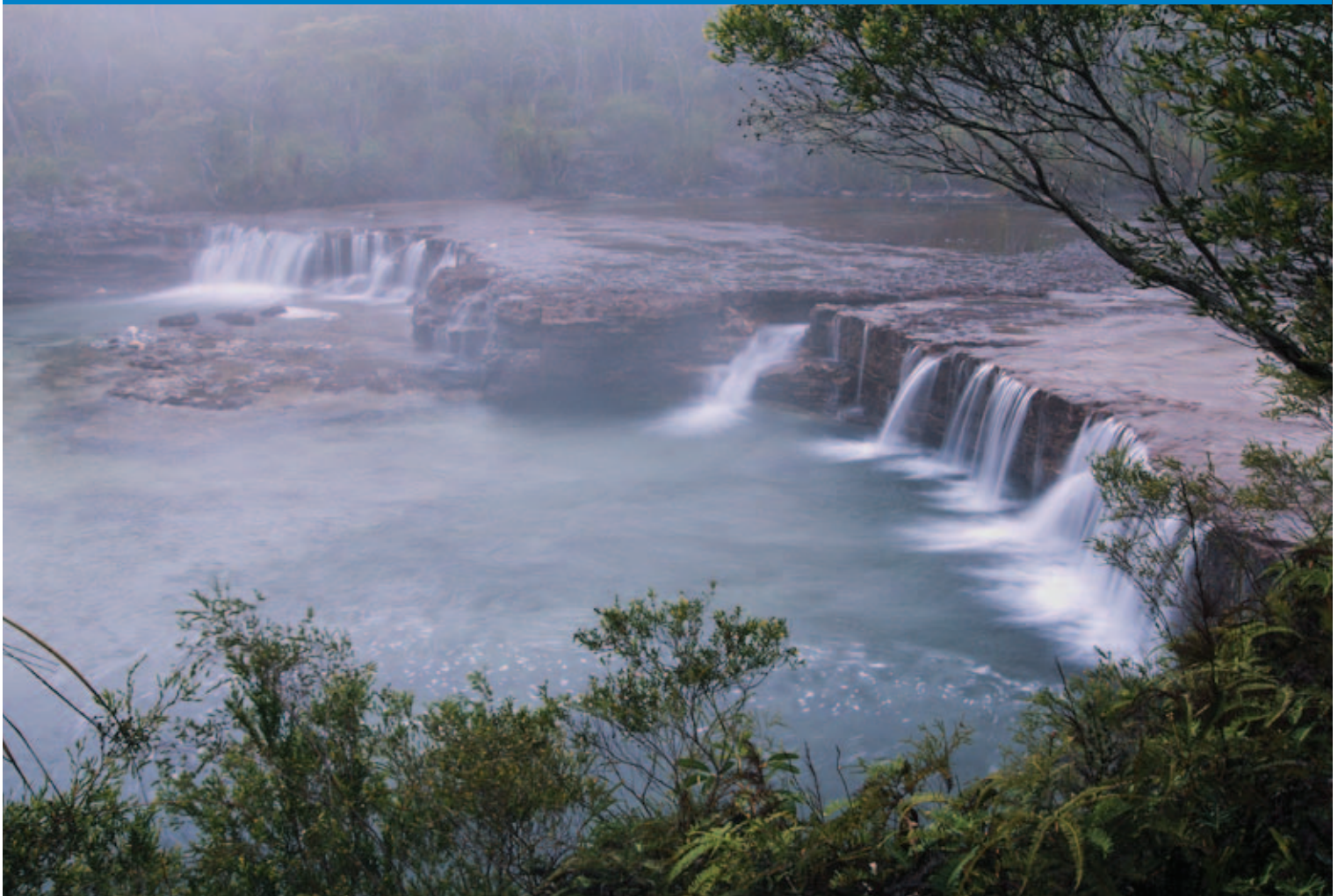


Protecting Rivers, Supporting Communities

A report series by The Wilderness Society for the House of Representatives Economics Committee's *Inquiry into issues affecting Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010*

Indigenous Rights and Wild Rivers

Report 6 of 6 – Feb 2011



Summary

This report provides an overview of the intersection of Indigenous rights and conservation and environmental decision-making, gives context to how the Wild Rivers initiative operates with respect to Indigenous rights, and provides a critique of the the Opposition Leader Tony Abbott's *Wild Rivers (Environmental Management) Bill 2010* (the "Abbott Bill"). A brief summary of each section of this report is as follows:

Indigenous Rights, Conservation and the Abbott Bill: Rather than being motivated by a growing international consensus about the rights of indigenous peoples, it is clear that the Abbott Bill is motivated primarily by political calculation, and fails to make a constructive contribution to the important issues of enhancing Indigenous rights across all areas, and ensuring we effectively manage our free-flowing river systems.

Environmental Decision-Making: At the moment there is a need to differentiate, and codify to a sufficient degree, the rights of decision-making in environmental regulation in Australia. In our view, a schema that accords with well-established legal and ethical parameters would cover: a veto (where Aboriginal land and resources are subject to destruction or appropriation); a right to negotiate (in relation to some development proposals and environmental regulations applying over Aboriginal lands); and consultation (used where public policy and environmental regulation of benefit to the general community but where there is no tangible effect on rights or property). A Wild River declaration should not be a matter for veto on environmental regulation, but it is a matter that requires more than simple consultation.

The Wild Rivers Initiative: The *Wild Rivers Act 2005* is lawful in relation to Aboriginal land ownership and Native Title Future Acts - it has not triggered existing negotiation instruments such as Indigenous Land Use Agreements. Section 44(2) of the *Wild Rivers Act 2005* is a clear statement that a Wild River declaration or the Wild Rivers Code as they apply for the purposes of an applicable Act cannot affect Native Title.

The Abbott Bill – Why it Fails: The political intent of the Abbott Bill is to try to overturn or undermine existing Wild River declarations in Queensland, and prevent new ones occurring - the consequence of which will be to authorise destructive forms of development in and near healthy river systems. Many Indigenous interests also lie in protecting and managing natural resources, maintaining the cultural connections on their homelands, and avoiding the environmental consequences of poorly regulated mining or other destructive development.

Addressing Concerns about Wild Rivers: The Wilderness Society's policy is to seek conservation outcomes that are consistent with Aboriginal rights, as recognised under Australian Law. We consider that law reform with respect to recognition of Indigenous rights is, and should be, ongoing through the political and judicial process. We would therefore support further development of the *Wild Rivers Act 2005* at the State level, and reform of the *Native Title Act 1993* at the Commonwealth level.

How this report relates to the Terms of Reference of the Inquiry

This report addresses the following components of the Terms of Reference:

- [The Committee should consider:] the impact which legislation in the form of the Wild Rivers (Environmental Management) Bill 2010 would have, if passed
- [The inquiry should pay particular attention to the following:] The effectiveness of current State and Commonwealth mechanisms for appropriate preservation of free-flowing river systems which have much of their natural values intact, including the preserving of biodiversity
- [The inquiry should pay particular attention to the following:] Options for improving environmental regulation for such systems
- [The inquiry should pay particular attention to the following:] The impact of existing environmental regulation, legislation in relation to mining and other relevant legislation on the exercise of native title rights and on the national operation of the native title regime and the impact which legislation in the form of the Wild Rivers (Environmental Management) Bill 2010 would have on these matters

Indigenous Rights, Conservation and the Abbott Bill

The Inquiry aims to focus on a range of conservation and development issues in Queensland, especially with respect to the Wild Rivers scheme and the aspirations of Indigenous people. The *UN Declaration on the Rights of Indigenous People*, which represents the current level of international consensus after decades of international dialogue, is a useful guide to "Indigenous aspirations". It is the most recent driver for Indigenous rights aspirations in Australia and presents a genuine opportunity for reconciliation and mutual recognition, as well as a driver for public policy debates and law reform.

Rather than being motivated by this growing international consensus about the rights of indigenous peoples, it is clear that the the Opposition Leader Tony Abbott's *Wild Rivers (Environmental Management) Bill 2010* (the "Abbott Bill") is motivated primarily by political calculation, and fails to make a constructive contribution to the important issues of enhancing Indigenous rights across all areas, and ensuring we effectively manage our free-flowing river systems.

A central premise of the Abbott Bill is that environmental regulation is illegitimate unless a landholder agrees with it. The Bill does not acknowledge any value in environmental legislation and conservation, despite the fact that the protection and management of the environment is a natural competitive advantage for Indigenous people and supports many of the rights and interests they hold, and that the community at large supports it.

Passing the Abbott Bill will not remove any real barriers to direct Indigenous participation in the economy, which include: lack of equity and working capital; distance from labor markets and trading centres; lack of public investment in education, skills and training; role confusion in governance arrangements; inadequate mechanisms for self-determination for individuals, families, clans, and for remote and homeland communities; all stand in the way of significant progress. Significantly and crucially, none of these are contingent on whether there is or is not a Wild River scheme.

Nor will it do anything to increase economic development, with the one exception of removing sensible and moderate restraints on the impact of mining and other destructive industries on the critical functioning of healthy rivers. In other words, Indigenous homelands, and the environment generally, would be exposed to unregulated exploitation. And against this, the rights and interests afforded under the *Native Title Act 1993* would hardly guarantee a prosperous and equitable outcome, or afford a veto to Traditional Owners over destructive activities on their lands should they oppose that.

Additionally, the Abbott Bill lacks the imagination to see that there is scope for new economics in Wild River areas, and will directly erode such opportunities. Industries that promote preservation of the environment are a growing area of the economy, and sit readily with the natural aptitudes and cultural preconditions of Traditional Owners. There is growing public and private investment in environmental services (in the order of hundreds of millions of dollars a year) which offer genuine job and enterprise opportunities in a conservation economy. The burgeoning in the number of Indigenous rangers and "Working on Country" programs in recent years highlights this. On top of this are a range of opportunities in sustainable tourism and medicine. This is an essential part of a mixed economy in remote areas and an important component of our transition to ecological economics and a low carbon-pollution future.

Furthermore, the Abbott Bill is ignorant of existing legislative and policy frameworks developed by the Queensland Government, and supported by all stakeholders, such as the *Cape York Peninsula Heritage Act 2007*, which aims to resolve many of these complex matters and to achieve a balanced response to competing conservation and development agendas (see Report 4 of this submission for more details on the Heritage Act).

The Abbott Bill will also not alter Indigenous rights or policy across the board for the better. It will create another level of complicated and unclear consultations with no obvious structure, and an emphasis upon buttressing the role of local councils and the statutory Native Title Bodies, at the expense of Traditional Owner groups, and with the prospect of achieving next to nothing.

The passing of the Abbott Bill will also have other serious consequences such as disturbing the constitutional basis of land and natural resource administration within the Federation, thereby adding to legal and political contestation (not resolving it). It will also generate a sense of inequity by granting entitlements to some Indigenous people and not others, who share the same rights and interests.

The historical denial of Indigenous peoples' right to development is an issue of equity. Economic disenfranchisement is a profound social justice concern, but it is not caused or exacerbated by the Wild Rivers initiative. Upholding the right to development of Indigenous people will be realised, not by defeating environmental regulation, but by Governments, in

"The historical denial of Indigenous peoples' right to development is an issue of equity. Economic disenfranchisement is a profound social justice concern, but it is not caused or exacerbated by the Wild Rivers initiative."

partnership with Indigenous people, facilitating public investment and seeding new enterprises and industries; providing incentives for private enterprise to deliver opportunities to remote Indigenous communities; recognising and valuing the customary economy; and ensuring preservation of cultural heritage.

The Wild River scheme is at the leading edge of preservation of free-flowing river systems. While there are enhancements that could be made to its operation, Wild Rivers offers an internationally groundbreaking model for management of precious rivers and water.

The challenge that any regulatory environmental scheme faces is how to resolve the tenure and property issues highlighted by Indigenous rights and native title claims, find the appropriate legislative and practical models of environmental protection and management, and drive forward the necessary reforms.

It is already well established that contemporary conservation strategies need to be demonstrably respectful of Indigenous people, their culture, property, rights and interests, and support sustainable economic development. But critically, they also need to guarantee a high level of environmental integrity, across the full suite of natural values and ecological processes, in face of the increasing range and scale of destructive threats and degrading processes. To fail to address both simultaneously is to fail in one of Australian society's great contemporary challenges.

Seen in this light, the Abbott Bill is deficient and entirely lacking in ecological underpinnings. By contrast, the Wild Rivers initiative is a promising and important development, with its landscape-scale approach to conservation and application to all tenures; its attempt to address both preservation and development of natural resources; its guarantees on native title; its legislated allocation of water for Indigenous purposes; and its support for Traditional Owner management of rivers.

To ensure the health of the environment it is necessary to establish public policy frameworks on ecologically sensible grounds, and with a view to conservation as a model of viable land use and economics. Policy makers should address both the social and economic costs and benefits of such measures, and address issues of equity and perverse outcomes if they arise. However, there are no grounds to think this will be achieved by granting one group an effective veto over environmental regulation.

Despite ill-informed claims to the contrary, the Wild Rivers scheme is "light-touch" regulation that meets several Indigenous aspirations and guarantees of existing rights. If anything, it highlights the limitations of the *Native Title Act 1993*, which has heavily favoured mining and pastoral interests since the days of the Howard Government's "10 point plan" amendments. Indigenous benefits are hard to leverage and are small in contrast to the benefits gained by others. The *Native Title Act 1993* does not mandate real profit share from resources, or provide a right to negotiate, much less a veto, thereby tilting the bargaining table away from Traditional Owners.

The Abbott Bill would do nothing to address this bias in economic power, but it will cause divisions and create further uncertainty, as it favours one approach and one set of interests, while leaving the task of important and more equitable reform in relation to the rights of Indigenous people unaddressed.

UN Declaration on the Rights of Indigenous People, and Conservation

Two articles of the *UN Declaration on the Rights of Indigenous People* are directly relevant to conservation and development:

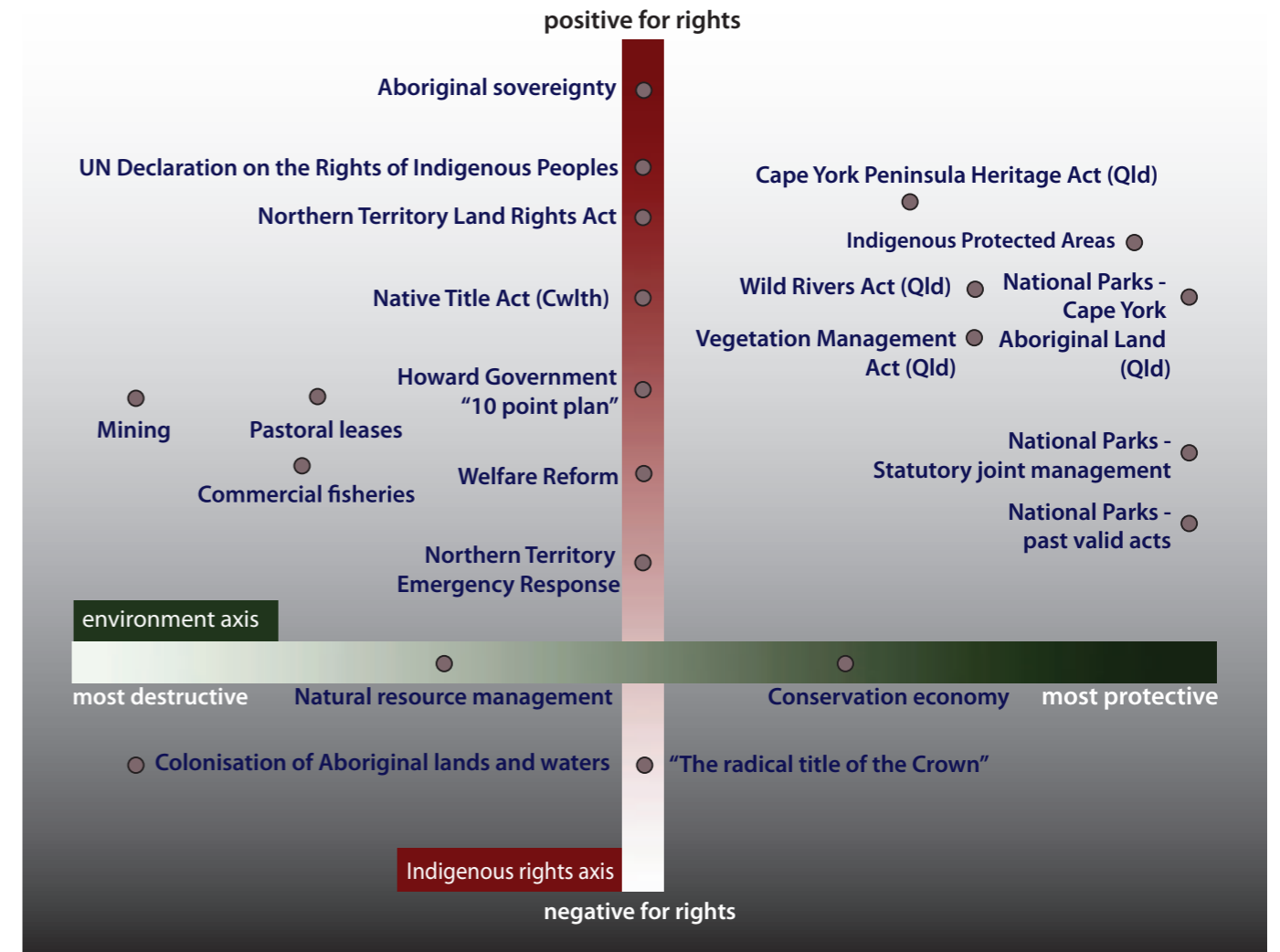
"Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination." (Article 29)

"Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources." (Article 32)

The Declaration is clear that these Indigenous rights sit within the broader human rights framework and in relation to the civil and political rights of others:

"...the exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society". (Article 46)

Indigenous Rights and Environmental Protection Schema



This schema attempts to plot various policies and legislation on an Indigenous rights and conservation axes. The red, vertical axis represents Indigenous rights, with the top, dark red area as the positive. The green, horizontal axis represents environmental protection, with the right, dark green area as the most protective. Conceptualised by these two important important measures, the Wild Rivers initiative, along with other Queensland land use reforms, represent some of the most progressive policies, while destructive industries (that most often extinguish Native Title rights in a legal sense), are the most regressive.

Environmental Decision-Making

In matters of Indigenous land use, environmental regulation and industrial development, the Native Title regime and Statutory Land Rights are the primary reference points in Australian law. The Native Title framework alone is national in scope. However, the set of rights afforded by the Native Title regime predates adoption of the *UN Declaration on the Rights of Indigenous Peoples*, and is itself subject to substantial critique and so new political contests have opened up and these will take some time to resolve. In addition, different views about how the declaration principles should apply in decision-making are clouding the current political debate.

The *UN Declaration on the Rights of Indigenous Peoples* and other international instruments provide a guide to standards that Nations need to apply and by which they can measure their own policies. Over time, new principles in international law will emerge that will influence developments in Australia.

However, at the moment there is a need to differentiate, and codify to a sufficient degree, the rights of decision-making in environmental regulation in Australia. This should reflect the norms of international law; meet the challenge of maintaining environmental integrity in the face of global, national and regional threats; and uphold the rights of Indigenous people. In our view, a schema that accords with well-established legal and ethical parameters would cover:

- **A veto** – used by Traditional Owners where Aboriginal land and resources are subject to destruction or appropriation, or made subject to industrialisation; where minerals are extracted to the permanent alteration of the Indigenous land estate, the cultural landscape, and the natural environment.
- **Right to negotiate** - used in relation to future acts where tenure or land use change is proposed over lands subject to native title or Aboriginal title; in relation to some development proposals and environmental regulations applying over Aboriginal lands; in the establishment of protected areas; regarding compensation for lawful compulsory acquisition, invalid acts, or impairment of rights.
- **Consultation** - used where public policy and environmental regulation of benefit to the general community has direct implications for Indigenous people, but where there is no tangible effect on rights or property.

Consequently, we maintain that a Wild River declaration should not be a matter for veto on environmental regulation, but it is a matter that requires more than simple consultation. This results in the clear need for some form of negotiation, in a context where the *Native Title Act 1993* does not automatically provide a trigger, where the precise form of negotiation process is undefined, but where the absence of full agreement is not sufficient to prevent a Wild River declaration. This presents the current situation where:

- Indigenous lands and other tenures are brought under legitimate environmental and conservation measures;
- Emphasis is placed on Traditional Owners' direct involvement in declarations and conservation management;
- Declarations may be made by the Minister, with the agreement of some Indigenous interests and disagreement from others, (or theoretically, in the absence of any agreement, providing the Minister has engaged Indigenous relevant people and the measures are equitable); and
- There is available an appeal to the Courts by aggrieved interests should any legal rights have been infringed for which a remedy is required.

For the purposes of protecting and managing free-flowing river systems, it is simply not viable in an ecological sense to have a system where some landholders can opt out of, or veto, a declaration. However, it is important in respect of Aboriginal rights in lands and waters that, from the outset, public conservation measures incorporate the perspective of Indigenous laws and customs, and traditional ecological knowledge. And Traditional Owners must retain autonomy with respect to the enjoyment of their native title and property rights within these frameworks. This is the case with the Wild Rivers scheme.

Sound environmental policy and a settled land use framework will only be achieved through an open and honest public-interest debate about how best to enhance Indigenous rights consistently across the board, without compromising the need for all landholders - Indigenous and non-Indigenous - to sensibly protect and manage our shared environment. This should become a priority national discussion, and one the Federal Parliament should embrace comprehensively.

“... we maintain that a Wild River declaration should not be a matter for veto on environmental regulation, but it is a matter that requires more than simple consultation”

The Wild Rivers Initiative

An objective assessment of the Wild Rivers initiative indicates:

- Wild Rivers is a planning scheme that regulates high-impact development for the purposes of maintaining the natural values and ecological functioning of healthy river systems. The Queensland Government has a legitimate role and a mandate, through constitutional powers and the process of democratic elections and policy formation, to implement this type of regulation on behalf of all Queenslanders. There is confirmation in the fact that the Queensland Government has gone to three state elections with this policy.
- The rights and interests of all Queenslanders (and Australians) to the sensible protection and management of the nation's river systems intersect with landholders' rights and interests in managing and controlling their lands within these systems. This clearly includes Indigenous people, who due to their customary tenure and native title have unique rights and interests in land as well as extensive contemporary landholdings. There is a strong social justice and public policy argument for greater attention to Indigenous rights, given the profound social and economic impacts wrought by the processes of colonisation and national development, and the ongoing need to redress this to meet the requirements of a just society.
- Like many other planning schemes, Wild Rivers does not affect ownership of land or have destructive impacts on land, resources, and culture. In addition, there is a guarantee of Native Title rights, both within the *Wild Rivers Act 2005*, and owing to the Commonwealth *Native Title Act 1993* taking precedence over the State's Wild Rivers legislation if there is inconsistency. Other instruments, such as the Racial Discrimination Act, may also afford enforceable protection to Aboriginal people. The freehold test as it applies to lands under Native Title also provides for equitable treatment of property rights.
- Development can, and does, still occur in Wild River areas. The Wild Rivers scheme does not prevent Indigenous development in Cape York or elsewhere, and other measures (such as the Cape York Peninsula Heritage Act) further enable this. There is also an Indigenous water allocation for community economic development in Wild River declarations as 'a right in water' – the first of its kind in Australia.

The *Wild Rivers Act 2005* is lawful in relation to Aboriginal land ownership and Native Title Future Acts - it has not triggered existing negotiation instruments such as Indigenous Land Use Agreements. Given this, and the current controversy, the Queensland Government could convene a negotiation roundtable to try to reach agreement between the State and Traditional Owners who speak for Country, to resolve outstanding and contentious matters.

It should also be clearly taken into account that the *UN Declaration on the Rights of Indigenous Peoples* provides that these rights be worked out in balance with the democratic rights of the members of the community at large. There must be formal and objective tests applied in relation to law and ethics, and good faith dealings on these matters - dissent alone does not demonstrate an infringement of Indigenous rights or justify Federal intervention.

The Abbott Bill does not provide any advance in this regard and only succeeds in fueling conflict and confusing the issues. There is no compelling argument for a Federal intervention of the kind proposed by the Leader of the Opposition.

Wild Rivers and Native Title

It is plainly the intent of the *Wild Rivers Act 2005* that it not affect Native Title. Section 44(2) of the *Wild Rivers Act 2005* is a clear statement that a Wild River declaration or the Wild Rivers Code as they apply for the purposes of an applicable Act, cannot affect Native Title.

The Explanatory Memorandum that accompanied these provisions when passed through the *Cape York Peninsula Heritage Act 2007*, describes the intention as being “to clarify that the wild rivers declaration or a Wild Rivers Code does not limit native title rights”.

If a Wild River declaration affects Native Title in a particular instance, then compliance with the *Native Title Act 1993* would be automatic and involve satisfying the procedural requirements set out in the *Native Title Act 1993* in relation to the relevant class of future act. Alternatively, it would entitle the Native Title holders to ignore any effect that a Wild River declaration or the Wild Rivers Code may have on that right under any of the other Acts. It would not invalidate a Wild River declaration.

There is no doubt an argument that Native Title rights should be extended to bring them more into conformity with the *UN Declaration on the Rights of Indigenous People*, but this is a matter for *Native Title Act 1993* reform.

The Queensland Government has put in place robust engagements with Indigenous people on Wild Rivers, and a host of other matters of public importance. Any further improvements required can be made within the existing legislative framework to ensure strong Traditional Owner representation to the State, and to create a space for negotiation to seek a level of general agreement and mutual understanding.

It should be noted that within the Wild Rivers scheme a level of Indigenous agreement has been established - for instance, with the Wild River declarations for the Gulf of Carpentaria. Traditional Owner groups and the Carpentaria Land Council endorsed the declarations, and entered into a negotiated outcome with the Queensland Government and other stakeholder groups, including the Queensland Resources Council and The Wilderness Society.

The then Premier, the Hon Peter Beattie, drove this process at the political level. At present, though, there is no statutory requirement for the Queensland Government to formalise input and negotiation with Traditional Owners (or any other people or groups), beyond public consultation provisions.

It would be valuable for the Queensland Government to formalise the structure of consultations on Wild River nominations, and any subsequent negotiations. In addition, the community requires certainty on how a Wild River nomination will be decided if the State and Indigenous parties cannot within a reasonable time reach agreement. It raises the question: should a Traditional Owner group, or a Land Council or Trust, be able to veto the regulation in whole or part - or should the Minister make the final decision after trying to reach agreement and taking into account all inputs. The latter is the current position at law.

Mr Abbott clearly designed his Bill to reverse the current position and introduce an effective veto over environmental regulations on Aboriginal lands - but only in respect of Wild River declarations, and principally to satisfy the regional interests of his allies on Cape York Peninsula. This no doubt suits the Coalition's political and economic purposes. There are far-reaching and serious implications for the community if the Federal Parliament passes this Bill.

The Abbott Bill – Why it Fails

Wild River declarations do not stop development (they simply regulate certain types of activities in differing preservation zones within a catchment), do not affect land tenure or ownership, and the *Wild Rivers Act 2005* states categorically that Native Title rights are not affected. This raises a serious question of intent: what is Mr Abbott seeking to achieve through his Bill?

The political intent of the Abbott Bill is to try to overturn or undermine existing Wild River declarations in Queensland, and prevent new ones occurring - the consequence of which will be to authorise destructive forms of development in and near healthy river systems.

In September 2010 when announcing he would re-introduce his anti-Wild Rivers Bill, Mr Abbott said: “*I think it's very important that the Queensland Wild Rivers legislation be over-turned.*” (Tony Abbott Press Conference 2010). To do this, the Abbott Bill seeks to establish an unprecedented veto for Indigenous interests, resulting in a situation where individuals or groups opt out of valid environmental regulations.

The Bill purports to redress an infringement of Indigenous rights caused by the declaration of Wild River areas. But Mr Abbott has not stated what these alleged infringements are in relation to any domestic or international law.

Mr Abbott's approach implies that the *Wild Rivers Act 2005*, with its guarantee on native title rights under the *Native Title Act 1993*, are somehow deficient in enabling and protecting these claimed rights. But he has never identified why current legal provisions of both these pieces of legislation are inadequate to address any perceived impact on the Native Title and property rights of Indigenous peoples. And at any rate, a more sensible and objective approach would be to make changes to these pieces of legislation to address the issues.

Instead, the insubstantial few pages of the Abbott Bill defaults to the *Native Title Act 1993* ILUA provisions. This begs the question: why do Cape York Indigenous people require special legislation when the *Native Title Act 1993* is the default position? And if the Commonwealth *Native Title Act 1993* is deficient, why not amend it? Why attack the Queensland *Wild Rivers Act 2005*?

In addition, despite the title of the Abbott Bill referring to “Wild Rivers (Environmental Management)” it does nothing whatsoever to address the challenges of river protection, management and use. It simply proposes a veto for Indigenous interests over declarations, and serves to undermine the effectiveness of the current mechanisms for the preservation of free-flowing river systems in Queensland.

To justify this, it shifts focus away from the intersection of human rights and ecology to the paternalistic “race powers” of the Australian Constitution. By drawing on these Commonwealth powers, the Bill seeks to establish a principle that a valid environmental regulation can be “overturned”, or its effectiveness greatly reduced or defeated, if it involves “a special measure for the advancement and protection of Australia's indigenous people”.

The flawed logic of the Abbott Bill is that it presupposes that social justice concerns in relation to remote area Indigenous people can be addressed by simply removing environmental regulations, and that development by Indigenous people should be an unfettered right because of social disadvantage. By doing so, the Bill creates a dangerous precedent for the removal of a State's regulatory powers and responsibilities with respect to land tenure and environmental management.

A deep problem with the Bill is that it automatically equates “interests” with unfettered development rights. Yet many Indigenous interests also lie in protecting and managing natural resources, maintaining the cultural connections on their homelands, and avoiding the environmental consequences of poorly regulated mining or other destructive development. Indeed, many Indigenous peoples interests lie in pursuing options for economic development that sustain cultural identity and manage and protect the landscape.

The Bill does nothing to resolve the inherent tension between “a right to conservation” and “a right to development” – both being rights contained in the *UN Declaration on the Rights of Indigenous Peoples* and shared more broadly across the community.

Consequences if the Abbott Bill Passes

These are some of the likely adverse consequences if the Abbott Bill passes through Parliament:

- Undermine common law Native Title by shifting the balance of power for land use decisions away from Traditional Owners under Indigenous laws and customs, and to local and regional bodies corporate
- Affect the ability of the downstream communities to enjoy a healthy environment and design an economic future around a healthy river, if groups living upstream pursue unregulated development
- Expose presently healthy, free-flowing river systems to the most destructive forms of development
- Set a precedent for exemptions from planning and environmental laws on the grounds of race or property ownership
- Undermine the constitutional basis of tenure and land use decisions leading to legal challenges and the possibility of years of expensive and drawn-out litigation, prolonging conflict over Wild Rivers
- Jeopardise the employment for up to 100 Indigenous people in Wild River Ranger positions and cancel out the environmental benefits of the ranger program

Addressing Concerns About Wild Rivers

The Wilderness Society's policy is to seek conservation outcomes that are consistent with Aboriginal rights, as recognised under Australian Law. We consider that law reform with respect to recognition of Indigenous rights is, and should be, ongoing through the political and judicial process. We would therefore support further development of the *Wild Rivers Act 2005* at the State level, and reform of the *Native Title Act 1993* at the Commonwealth level.

It is sensible and possible for the State to resolve issues within the current legal framework of the *Wild Rivers Act 2005* and additionally with respect to Cape York Peninsula, the *Cape York Peninsula Heritage Act 2007*, and without Federal interventions. The Queensland Government should review and revise if necessary the *Wild Rivers Act 2005* to affirm its consistency with international standards. The review should be based on objective tests of current international law, constitutional power, procedural fairness and environmental outcomes.

In parallel, the Federal Parliament should take up the important matters of adoption of the *UN Declaration on the Rights of Indigenous Peoples*; national consistency in the recognition and exercise of Indigenous rights; and *Native Title Act 1993* reform.

Any substantive changes adopted by the Federal Government in this arena, will then flow through automatically to land and Native Title administration across all jurisdictions and relevant policy initiatives. This is in keeping with the correct constitutional balance, and will avoid added and protracted legal challenge and prevent the whole issue from bogging down permanently in partisan political dispute.

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