

# Submission 39



Australian Government  
Attorney-General's Department

10/5655

18 February 2011

Committee Secretary  
House of Representatives Standing  
Committee on Economics  
Parliament House  
CANBERRA ACT 2600

Dear Committee Secretary

## Clarifications and corrections to Hansard

I write concerning my evidence provided to the House of Representatives Standing Committee on Economics hearing of the Inquiry into Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010 of 26 November 2010. Following the hearing, I reviewed the proof copy of Hansard and consequently, wish to submit the following corrections and clarifications about this evidence.

### Queensland *Wild Rivers Act 2005*

In an exchange about the operation of the *Wild Rivers Act 2005* (Qld) on native title rights and interests, and after referring to s 44(2) of the *Wild Rivers Act* and s 13A of the *Acts Interpretation Act 1984* (Qld), I noted on page 13 of Hansard that 'the Queensland wild rivers legislation expressly provides that it does not affect native title. So the operation of the Queensland Wild Rivers Act is quite clear that it precludes an impact on native title rights and interests'. To ensure there is no confusion about how these sections interact I note that it is the *Wild Rivers Act*, in particular s 44(2), with 13A of the *Acts Interpretation Act*, that means that a wild river declaration or wild river code does not affect the exercise and enjoyment of any native title rights and interests in a declared wild river area.

Following an earlier exchange with Ms Julie Owens regarding the Queensland consultation process, I stated on page 25 of Hansard 'the Queensland legislation requires that when the minister is making a decision in relation to a declaration, they have to take into account the *consultation report* based on the consultations that are undertaken. That is a legislative requirement' [emphasis added]. I wish to clarify that under the *Wild Rivers Act* what the Queensland Minister is required to consider before making a declaration includes 'the results of community consultation on the declaration proposal' and 'all properly made submissions about the declaration proposal' (see sections 13 and 15). A 'consultation report' (which has a specific meaning under section 38 of the *Wild Rivers Act*) is prepared by the Minister after the declaration is made so would not be taken into account before the making of the declaration.

In further exchanges about the Queensland consultation process with Mr Andrew Leigh, I noted on page 7 of Hansard the 'very extensive range of consultation mechanisms that *need* to be employed by the Queensland Government' [emphasis added], later indicated that a declaration is made following

a consultation process which is quite extensive (page 15 of Hansard), and gave examples based on information collected by the Attorney-General's Department from public sources (page 19 of Hansard). My comments should have indicated that while the mechanisms employed in practice can be extensive, the specific provisions of the legislation providing for notification, making submissions and community consultation are sections 8, 11 and 12, and for the Minister to take these submissions and consultations into consideration are sections 13 and 15 (referred to above). Verification of the actual consultation process undertaken by the Queensland Government can be obtained from the Queensland Government.

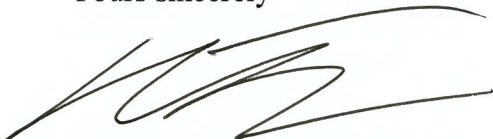
Also in an exchange about the consultation process, specifically for the Archer Basin, I noted on page 20 of Hansard 'throughout that period – so this is *just in relation to the Archer Basin* – they visited the areas of Aurukun, Lockhart River, Coen, Cooktown, Weipa, Napranum, Mapoon, Port Stewart and Portland Roads.' [emphasis added]. I wish to correct the record to note that these consultations were for three basins, not one.

In an exchange with Mr Steven Ciobo about the economic impact of the wild river declarations at page 15 of Hansard, I noted 'the way the legislation has been framed and the processes that are involved in being able to make a declaration certainly make provision for a whole range of issues like economic impact.... in that sense, it could be fair to say that implicitly there is an acknowledgement that declarations do have to take account of the realistic circumstances in which they are being potentially applied, and factors like economic impact needs to be taken into account'. Section 13(1) of the Wild Rivers Act (referred to above) sets out the specific matters the Minister must take into account when preparing a wild river declaration. Section 13(3) makes it clear that this does not limit the matters the Minister may consider. Section 15 also requires that in deciding whether to make a declaration the Minister must consider 'the matters mentioned in section 13 and any other matters the Minister considers appropriate'. Any further information about the additional factors taken into account for individual declarations can be obtained from the Queensland Government.

#### Wild Rivers (Environmental Management) Bill 2010

In an exchange with Mr Stephen Jones on page 13 of Hansard, I noted 'in terms of the bill that is before the parliament, it provides a right for the Aboriginal landowners to, if they do not agree, prevent a declaration from being made—so, to prevent the environmental regulation to proceed.' Similarly, on page 18 of Hansard, in discussing the operation of proposed sections 5 and 6 of the bill, I noted that those provisions 'provide the persons as defined in the bill with a right to prevent a declaration being made by refusing agreement to the declaration'. I wish to correct the record to note that what can be prevented under those provisions is the regulation of the development and use of the Aboriginal land. The provisions do not expressly prevent the declaration being made. The effect remains that the provisions would seek to prevent environmental regulation.

Yours sincerely



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