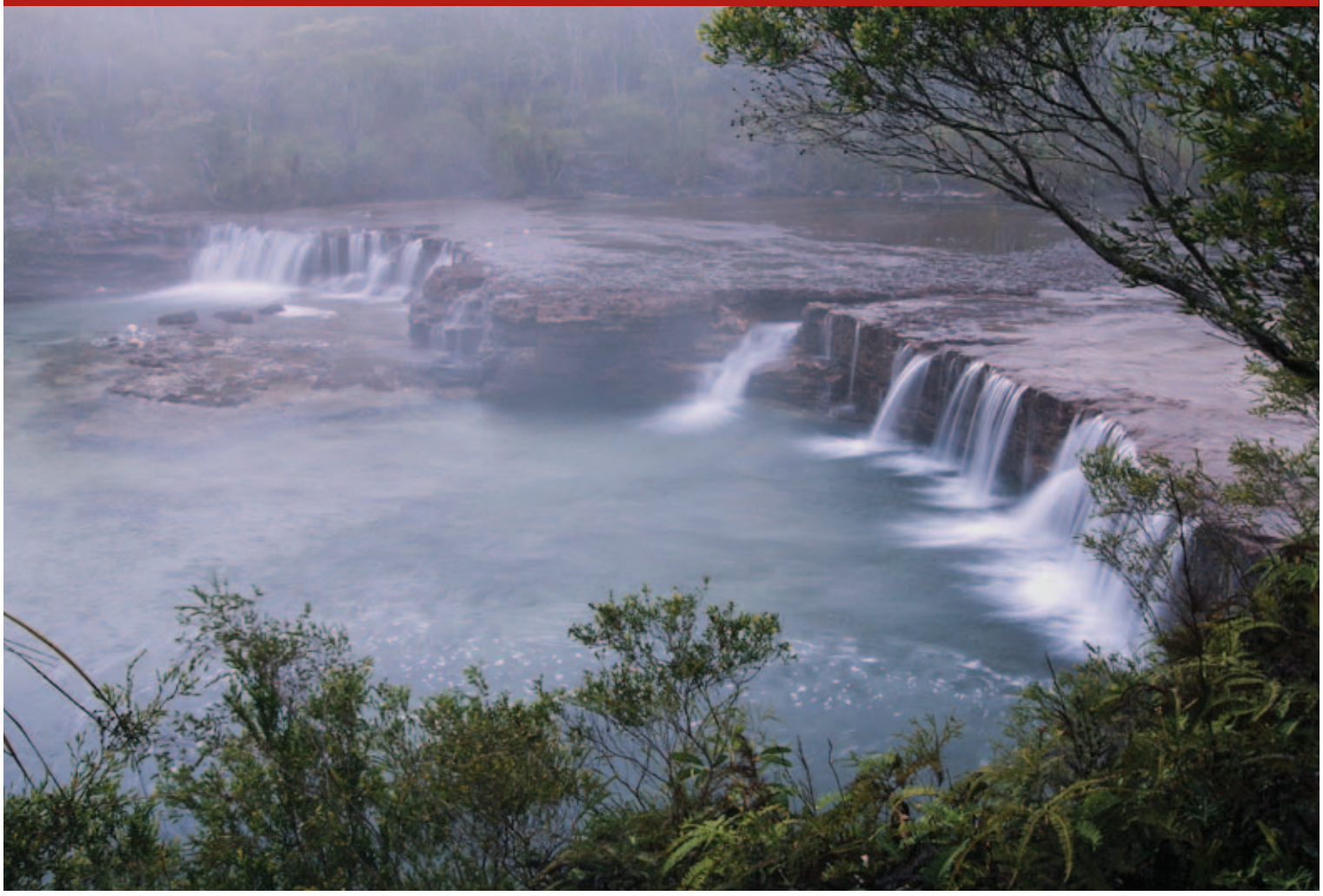
Protecting Rivers, Supporting Communities

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



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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 Wild Rivers Act (Qld) 2005 and the Environment Protection and Biodiversity Conservation Act 1999;	Report 2 Report 3 Report 4
2. the impact which legislation in the form of the Wild Rivers (Environmental Management) Bill 2010 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 Wild Rivers (Environmental Management) Bill 2010 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 where 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 affect 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 be 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 conisders 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 Penisula 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 theCape York Institute and Balkanu Cape York Development Corporation to undertake a range of related activites.

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.

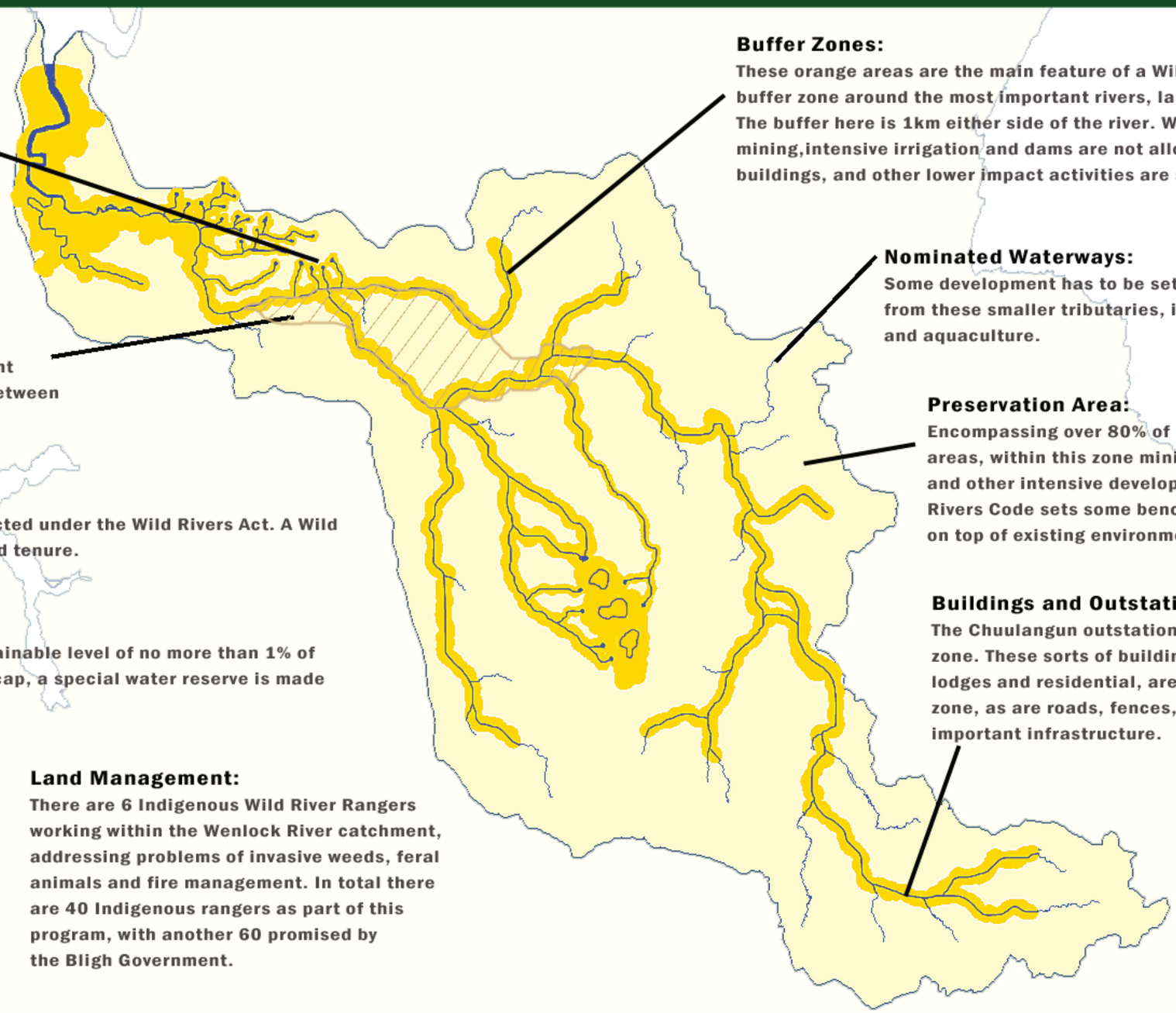
The Wild Rivers Initiative: The *Wild Rivers Act 2005* is lawful in relation to Aboriginal land ownership and Native Title Future Acts - it has not triggered existing negotiation instruments such as Indigenous Land Use Agreements. Section 44(2) of the *Wild Rivers Act 2005* is a clear statement that 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)

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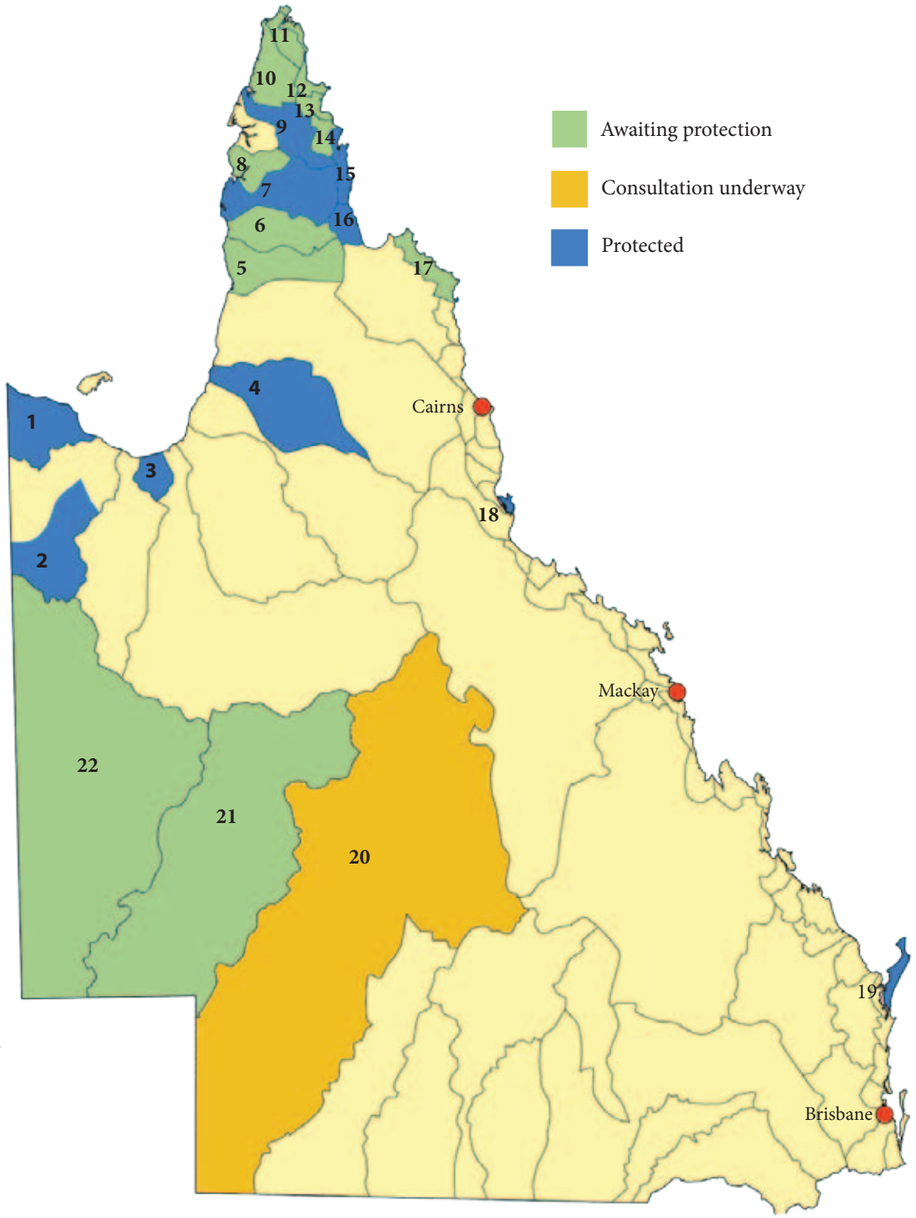
Map of Declared and Proposed Wild River Areas



1. Settlement Creek
2. Gregory River
3. Morning Inlet
4. Staaten River
5. Coleman River
6. Holroyd River
7. Archer River
8. Watson River
9. Wenlock River
10. Ducie River
11. Jardine River
12. Jacky Jacky Creek
13. Olive River
14. Pascoe River
15. Lockhart River
16. Stewart River
17. Jeannie River
18. Hinchinbrook Island
19. Fraser Island
20. Cooper's Creek
21. Diamantina River
22. Georgina River

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 *Wild Rivers Act*, 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 *Wild Rivers Act* 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 *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 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 *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 constraint

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 meeds 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
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

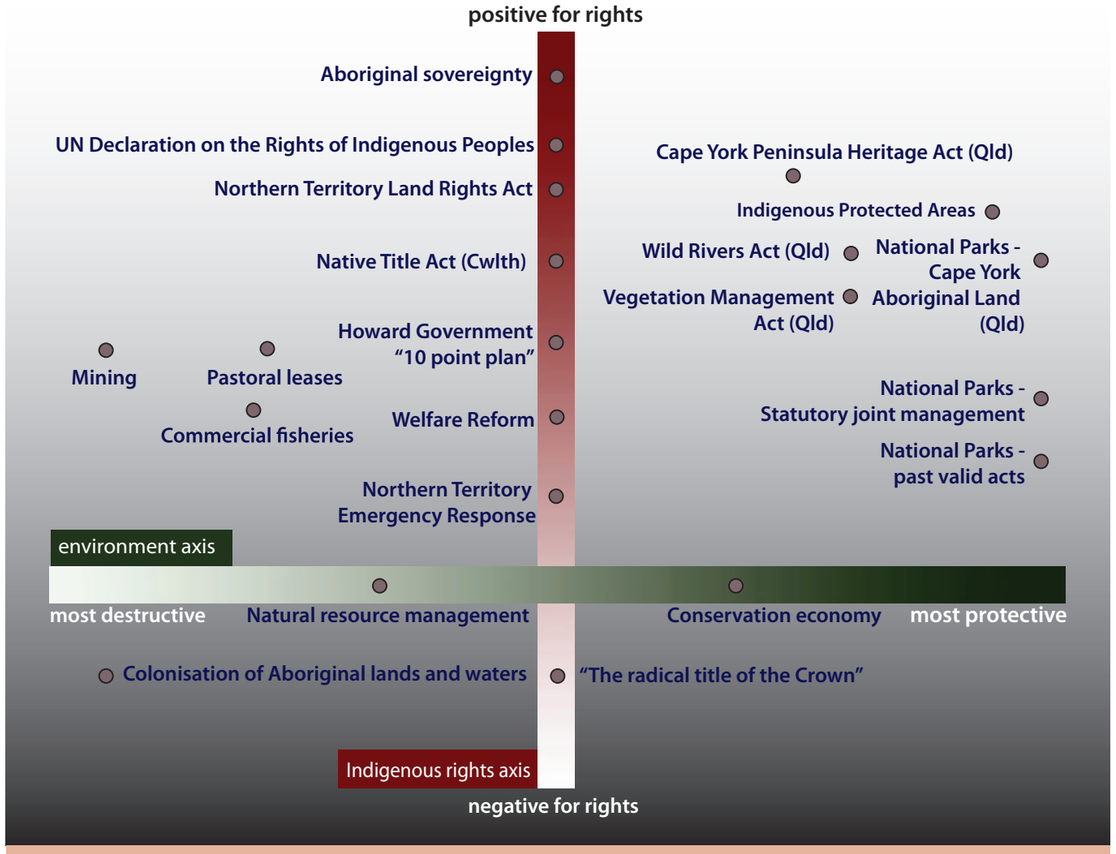
It is plainly the intent of the *Wild Rivers Act 2005* that it not affect Native Title. Section 44(2) of the *Wild Rivers Act 2005* is a clear statement that a Wild River declaration or the Wild Rivers Code as they apply for the purposes of an applicable Act, cannot affect Native Title.

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