

Submission to inquiry into issues affecting Indigenous economic development in Queensland

1. I write to address the matters of the effectiveness of the current mechanisms for appropriate preservation of free flowing rivers in Australia with particular regard to the Commonwealth legislation and mechanisms. Earlier this year I made a submission to the Senate Legal and Constitution Committee wild rivers inquiry in which I summarised the history of wild river conservation in Australia. I enclose a copy of that submission in case it is of value to the House Economics Committee.

2) In this submission I wish to pay particular attention to the Commonwealth's duties and responsibilities under the World Heritage Convention.

3) Wild river protection in Australia is closely related to wilderness protection. the key landmarks in the involvement of the Commonwealth in these joint matters are as follows:

a) 1986 Council of Nature Conservation Ministers publishes *Guidelines for the Reservation and Management of Wilderness Areas in Australia*.

b) 1986 to 1994 Under Commonwealth Wilderness Programme Australian Heritage Commission developed 'National Wilderness Inventory' – last updated 1998.

c) 1992 Report of Forest and Timber Inquiry (Resources Assessment Commission) recommended that the States and Territories undertake comprehensive reviews of public lands to "determine all areas of wilderness quality" and that protection should be afforded to these areas under state and territory wilderness legislation.

d) 1992 (January) Commonwealth released a discussion paper on a national wilderness protection system.

e) 1992 (December) Prime Minister Paul Keating committed the Commonwealth to identifying all of Australia's pristine rivers and encouraging the protection and appropriate management of their catchments.

f) 1993 to 1998 Australian Heritage Commission carried out inventory of Australia's rivers – 'Wild Rivers Project'. Reports from the inventory work: *National Wilderness Inventory Handbook of Procedures, Content and Usage; the Role of Wilderness in Nature Conservation* and *Conservation Guidelines for the Management of Wild Rivers*. The national wilderness data and wild river data is now available online as 'The Australian Land Disturbance Database'.

4) There has been little action at the Commonwealth level since 1998 to provide a national framework for these efforts and the opportunities provided by the National Reserve System have been neglected. Instead it has been left entirely to the States and Territories to put into effect the results of all this work of which the Queensland effort in developing and applying its Wild Rivers legislation is a stand-out example.

5) Of course this does not excuse the Commonwealth for a decade long record of gross inaction, a failure compounded by the fact that it has clear responsibilities under federal legislation and the World Heritage Convention. What is at stake are natural systems of national and international significance because of their very important ecosystem functions.

6) The responsibilities to which I refer are set out in the Environment Protection and Biodiversity Conservation Act 1999 and the World Heritage Convention. With regard to World Heritage protection the relevant section in the federal legislation is Part 15 of the EPBC Act and in particular subdivisions E and F. The World Heritage Convention creates clear responsibilities for the Commonwealth to identify and protect places of international significance within its boundaries. Its right of intervention to protect such places was upheld by the High Court in July 1983 following its intervention to prevent the building of a dam on the Gordon River in Tasmania's Franklin Gordon Wild Rivers National Park. My understanding is that the onus on the Commonwealth to protect an area applies also to areas on its inventory of potential world heritage places identified under its responsibilities under Article 11(1) of the Convention. These are areas placed on a Tentative List. Under its Operational Guidelines The World Heritage Committee will not consider a nomination of a site unless it has been previously submitted as part of the Tentative List

7) The situation in Queensland with regard to Wild Rivers and World Heritage can be summarised as follows:

a) Declared Wild Rivers which are in already established World Heritage Areas: Fraser Island and Hinchinbrook Island;

b) Wild Rivers existing and proposed on 'Cape York Peninsula' which on May, 2009 was added to Australia's Tentative World Heritage List; and

c) Proposed wild rivers in Lake Eyre Basin which is in the proposed 'Eastern Arid Zone World Heritage Area'.

8) As a result there is a legal obligation on the Commonwealth to at least consider the impact on World Heritage values of any action which would militate against these values in the case of the rivers in a) and b) above. Given the longstanding nature of the proposal in c) I believe there is a moral obligation to act similarly with regard to these proposed wild river declarations.

9) I urge the Committee to also consider how the Commonwealth can best make use of the valuable inventory work done in the 1990s by promoting wild river declaration across Australia and make the results an important part of the National Reserve System

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13/11/10

## SUPPLEMENTARY SUBMISSION TO WILD RIVERS INQUIRY

### A) INTRODUCTION – PURPOSE OF SUBMISSION

This submission concerns the reference in the Wild Rivers (Environmental Management) Bill 2010 to wild river area declaration and management. As with the preliminary submission it seeks to provide background about these matters so that the Legal and Constitutional Committee has a broad understanding of this subject. The general point made is that this has an Australia-wide history and is a matter of national importance.

### B) EXPERTISE IN WILD RIVER MATTERS

I have had many years of involvement with heritage protection in Australia and overseas including:

- 1) As Consultant in 1973/74 to the Task Force on the National Estate;
- 2) As CEO from 1973 to 1986 of the Australian Conservation Foundation;
- 3) As a Member since 1979 of the World Commission on Protected Areas;
- 4) As Regional Councillor from 1981 to 1988 representing Australasia and Oceania on the Council of the World Conservation Union.
- 5) As a private heritage consultant since 1986 providing expertise on heritage matters to a wide range of bodies including the Governments of the Commonwealth, NSW, Victoria and the Northern Territory. One of my reports was *Determining the Environmental Conservation Values of New South Wales Rivers (August 1990)*.

### C) HISTORY OF RIVER CONSERVATION IN AUSTRALIA

While we in Australia have been protecting particular parts of the landscape for their natural values within a few years of white settlement and were responsible for setting aside (at Royal) the world's first "national park" we were slow to develop a similar approach to the conservation of rivers and streams. This slow start coupled with the significance of rivers in a relatively arid continent gives wild river protection an added importance.

Until the 1980s most of the emphasis of river management was on taming the waters for irrigation and power production and the establishment of government bodies with responsibilities in river management such as Victoria's State Rivers and Water Supply Trust (established in 1905). This approach involved a focus on river diversion rather than protection. Nevertheless, such projects as the Snowy Mountains Scheme did indicate the need for soil conservation and catchment protection and helped with the establishment in 1944 of the Kosciuscko State Park. In a rare move in the early 1960s the Snowy Mountains Authority was prevented from diverting the headwaters of the Snowy River by means of the declaration of a Primitive Area (as provided for in the Kosciuscko State Park Act). An even earlier series of river reservations, beginning in 1908, were made along the Gordon River in western Tasmania.

The consequence of this emphasis of management on productive use and diversion was that except in national parks relatively few rivers remaining with unregulated flows and unaltered catchments. Public awareness of the value of wild rivers took a huge jump forward in the 1970s and early 1980s with the battles to save Lake Pedder and the Lower Gordon and Franklin Rivers. Out of the Lake Pedder issue and a federal Government enquiry there arose an awareness of the national importance of such heritage features and the involvement of the federal government in heritage protection nationally.

It was also after the unsuccessful attempt to save Lake Pedder and during the increasing tempo of the battle to save the Franklin that the Australian Conservation Foundation developed a comprehensive policy statement on wild and scenic rivers (see attachment). This pivotal policy, which took its inspiration from the US Wild and Scenic Rivers Act of 1968, dealt with all aspects of the subject including: the

case for wild river declaration (their values and benefits); inventories; classification and management; and federal and state legislation for river protection.

The US legislation dedicated 8 rivers as the Federal Wild and Scenic River System and by 2008 this system applied to 18,000 kilometres on 166 rivers in 38 States. As is well known the US approach to protecting the natural heritage places a heavier emphasis on federal government action largely because in America most public lands are under federal jurisdiction. In Australia the State and Territory Governments have the direct land management responsibility but there is no reason why the Commonwealth Government should not play an important role particularly with regard to the carrying out of inventory work (see below) and the development of a national wild river system.

Because the State and Territory governments have the primary responsibility for land conservation much of the action in this sphere to date has been at this level. Taking New South Wales as an example the National Parks and Wildlife Service, the State Pollution Control Commission, the Department of Water Resources and the Ministers for Natural Resources, and Planning and the Environment all commissioned reports on the topic during the 1980s. In 1982 a Wild and Scenic Rivers Committee was appointed to report on the topic to the Ministers for Natural Resources and Planning and the Environment. Their report was entitled *Wild and Scenic Rivers in New South Wales (1984)*. It recommended special legislation for these rivers, the appointment of a Wild and Scenic Rivers Protection Council and further inventory work. In 1985 a Wilderness Working Group was also appointed with terms of reference which also embraced wild rivers. The report of this group to the Minister for Planning and Environment *Report of the Wilderness Working Group (1986)* also recommended further inventory work and the passage of a *Wilderness and Wild Rivers Act* in conjunction with a strengthened *National Parks and Wildlife Act*. In 1995 in an election statement the NSW Government pledged legislation to protect and manage wild and scenic rivers and to vest responsibility for them in the Parks Service. Section 61 of the *National Parks and Wildlife Amendment Act 1997* provided for the declaration of 'wild and scenic rivers' but no rivers were declared under these provisions. A further change was made to this provision in the *National Parks and Wildlife Amendment Act 2001*. Reference to 'scenic' values was removed from section 8(6) and replaced with a definition that requires consideration

of the biological, geomorphic and hydrological condition of the river. Section 61 was also amended so that it applies only to national parks

I will not attempt to summarise the wild and scenic river conservation efforts in the other states in detail but they roughly mirrored the New South Wales events and involved reports by both government and non government entities. For instance the Victorian Government's Conservation Strategy *Protecting the Environment (1987)* included a commitment to protect 'heritage rivers' which led to the Rivers and Streams Special Investigation by the Land Conservation Council. This followed various state of the river reports (1983 and 1987). In its *Rivers and Streams Special Investigation Final Recommendations (June 1991)* the Land Conservation Council recommended the term 'heritage rivers' as best describing the range of values and noting that the Canadian system uses this term. The Council recommended a Victorian Heritage Rivers Act and recommended 17 heritage rivers for the system as well as a number of 'essentially natural catchment's and 'representative rivers'. The legislative provision which followed was the *Heritage Rivers Act 1992*.

In moving to legislate for wild river protection Queensland drew on the many years of Australian investigation of these matters including the national inventory and on the protections provided in Victoria and New South Wales as well as on the provisions for the conservation of river heritage values in the US, Canada and New Zealand. In 2004 the Queensland government issued its 'Queensland Wild Rivers to Run Free' pledge to protect 19 of Queensland's wild rivers before the next election. With an electoral mandate this led to the passage of *The Wild Rivers Act 2005* and the subsequent wild river dedications.

#### D) THE CASE FOR PROTECTION – VALUES AND BENEFITS

The ACF policy statement on 'Wild and Scenic Rivers' of 1980 argued that wild and scenic rivers are extremely important for scientific study and have unique scenic and recreational values and that these outweigh their value for resource development and water control measures. A more modern statement would probably include their value protection of catchments and river banks against erosion. Probably the best succinct statement on these values in the Australian context is to be found in the

Land Conservation Council's *Rivers and Streams Special Investigation Final Recommendations* (June, 1991).

## E) CLASSIFICATION AND MANAGEMENT AND RIVER INVENTORIES

The ACF policy statement suggested and defined three river categories - 'wild river area'; 'scenic river area' and 'recreation river area' – and suggested management guidelines for each. As mentioned above the Canadian and Victorian systems used the term 'heritage river'. The Victorians also provided for identification and protection for 'representative rivers' and 'essentially natural catchments'.

The Australian Conservation Foundation began to gather suggestions for wild, scenic or recreation rivers in September 1980 and these came from many parts of Australia including from North Queensland. An Aboriginal group based in Pine Creek proposed several key river and creek systems for long-term protection which was understandable given that care for country was the primary consideration for indigenous people respectful of their long-standing traditions.

The beginning of detailed study of this matter was the paper by Peter Helman *Wild and Scenic Rivers: A Preliminary Study of New South Wales. A Report to the National Parks and Wildlife Service of New South Wales. April 1979 (published 1981)*. Following this further studies were made so that eventually the whole state was covered. A similar course of action was followed in Victoria with the first report by Louisa MacMillan (1982) being on the rivers of East Gippsland. Similar studies were also made in Western Australia.

Given this level of interest it was probably inevitable that the federal Government would eventually become involved. In 1978 the Australian Heritage Commission made available funds for the development of an inventory of the rivers of Western Australia. In December, 1992 the Prime Minister in his Statement on the Environment committed the Commonwealth to identifying all of Australia's wild rivers and encouraging government agencies and the Australian people generally to more effectively protect them. This led to the Australian Heritage Commission's



Wild Rivers Project begun in 1993. With the help of the ANU's Centre for Resources and Environmental Studies the AHC carried out an inventory of the condition of Australian rivers. By 1998 it had produced maps ('Identified Natural River Maps') for the whole of the country and produced the report *Conservation Guidelines for Management of Wild River Values*. The Queensland initiative drew on the injunction of the federal government to legislate and on the inventory material provided by the AHC studies. Early wild rivers declared such as on Fraser Island and Hinchinbrook Island were in existing national parks.

Another place in which wild river and wilderness protection figured was in the 12 Regional Forest Agreements (RFAs) concluded between the Commonwealth and the States between 1997 and 2001. The definition of 'wild rivers' given in the Tasmanian RFA was as follows:

*Means a river of natural origin, in which biological, hydrological and geomorphological processes of river flow, and intimately linked parts of the catchment, have not been significantly altered by modern or colonial society. Wild rivers may include permanent, seasonal or underground water courses. Wild Rivers in Tasmania have been agreed as part of the national Wild Rivers project.*

#### D) LEGISLATION

Reference has already been made to the special legislative provision made for wild and scenic river protection in New South Wales and Victoria. In Tasmania, South Australia, Western Australia and the Northern Territory the state Governments have protected their rivers primarily through national park declaration.

The most publicised instance of this was the establishment of the Franklin Gordon Wild Rivers National Park in 1981 which, along with its inclusion on the World Heritage List in 1982, led to the federal Government's blocking of the Gordon below Franklin Dam. Interestingly this National Park had resulted from proposals made by the ACF (formed 1965) and the Tasmanian Wilderness Society (formed 1976) over several years and built on the reserves along the Gordon established in the first decade of the twentieth century and the establishment of the South West National Park in 1968. When proclaimed in 1981 the Franklin Gordon Wild Rivers

National Park covered 195,200 hectares. The Tasmanian Government then revoked 14,125 hectares for the Dam. Most of this was restored in 1992 and a further 245,000 hectares was added bring the present area to 440,961 hectares, There is little doubt that the Wilderness Zone in the Tasmanian Wilderness World Heritage Area covering over 1 million hectares has the greatest number of rivers untouched by modern technological society of any part of Australia.

## E) WILD RIVERS AND INDIGENOUS RIGHTS

The Australian Conservation Foundation has spent many years working for conservation in areas that have been occupied by Aboriginal people for tens of thousands of years such as South West Tasmania (working on this area since the 1960s), Arnhem Land and Central Australia (since the 1960s), Cape York Peninsula (since the 1970s) and the Kimberley (since the early 1980s). It has supported the land rights (eg the Northern Territory Land Rights Act) and reached agreements with Aboriginal representative groups (eg with the Central Land Council). Based on this experience of cooperation it has produced policy statements on 'Indigenous Peoples' Land and Water' and Wilderness and 'Indigenous Cultural Landscapes in Australia' Both of these policy statements are attached. You will see from the latter that the Foundation believes each State and Territory should ensure protection of wilderness and that the Commonwealth should establish a national wilderness protection system. Wild rivers fall into the same IUCN international protected areas category as Wilderness – category 1b.

## F) RECOMMENDATION

I trust it is obvious from the above that protection of wild and scenic rivers is of national importance. While the Commonwealth has contributed to their protection through the national Wild rivers project and the carrying out of a national inventory it obviously has the potential to add to this effort by establishing a federal wild, scenic and heritage rivers system. The ACF policy recommended federal legislation. The most obvious vehicle for early action is the existing National Reserve System. I suggest that the Committee recommend that the federal Government advance the cause of wild river protection by taking the next step of including the existing and future protected rivers as a special category in the National Reserve System and

recommend that there be a federal inquiry into the benefits to be derived from federal wild rivers legislation.

Dr Geoff Mosley AM

## ATTACHED

1. ACF Wild and Scenic Rivers Policy Statement.
2. ACF Indigenous Peoples' Land and Water Policy Statement
3. ACF's Wilderness and Indigenous Cultural Landscapes in Australia Policy Statement.

Note: These policy statements are also available on the ACF website.