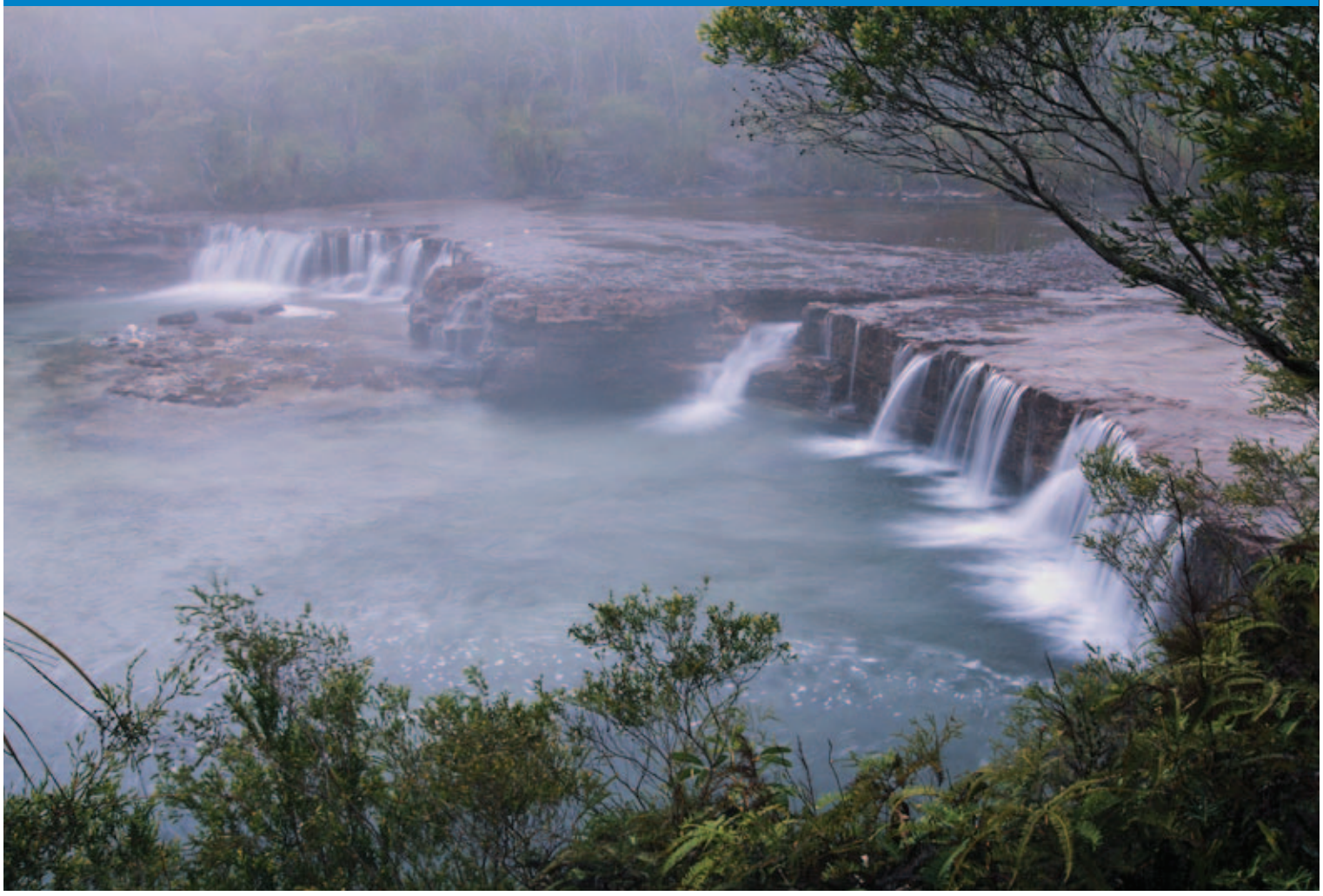
# Protecting Rivers, Supporting Communities

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



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# 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 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.

## 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 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."

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

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:

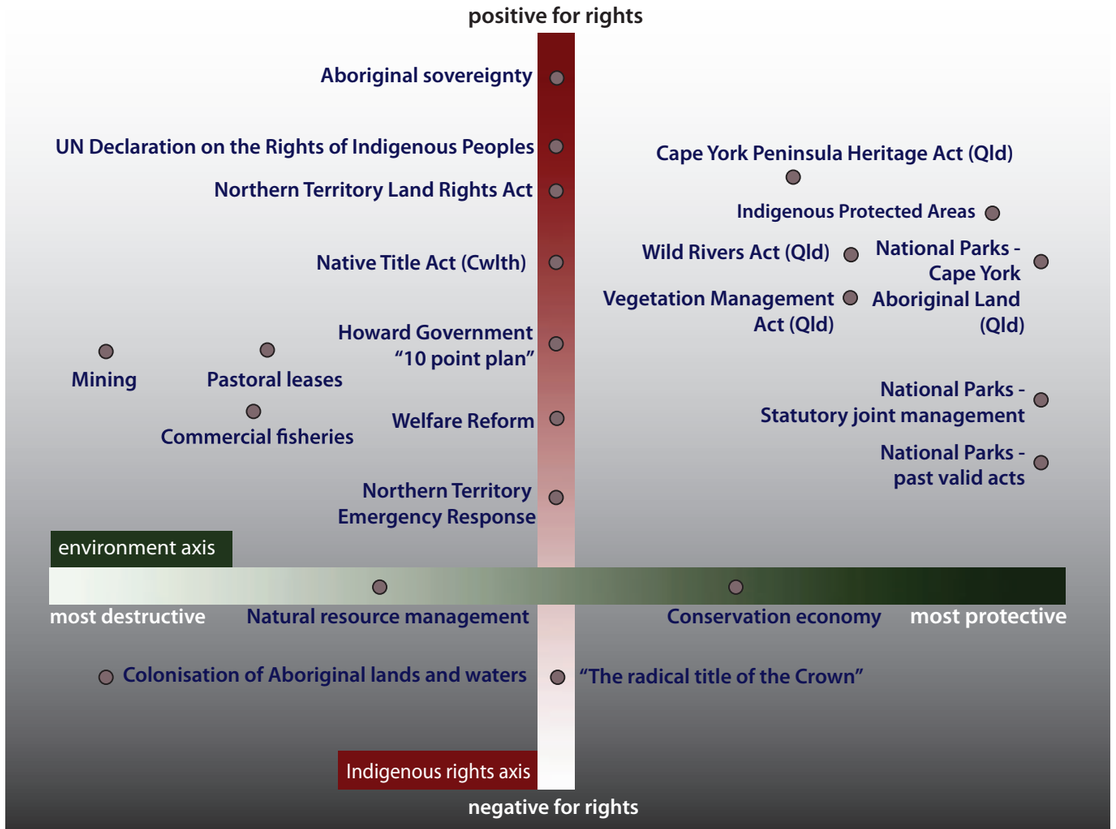
> *"Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination."*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

# Environmental Decision-Making

> "... we maintain that 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"

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 it 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.



# 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 though 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."

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