

## Background

### Referral of the Inquiry

- 1.1 On 3 November 2010 the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP, requested the committee to inquire into and report on Indigenous economic development in Queensland including issues surrounding the *Wild Rivers Act 2005 (Qld)*.
- 1.2 On 17 November 2010 the House of Representatives referred the Wild Rivers (Environmental Management) Bill 2010 ('the Bill') to the committee for inquiry and report by the end of the autumn period of sittings in 2011. This Bill was introduced as a private Member's Bill by the Leader of the Opposition, the Hon Tony Abbott MP on Monday 15 November 2010. The Bill, which was introduced without an explanatory memorandum, provides that the development or use of native title land in a wild river area cannot be regulated under the *Wild Rivers Act 2005 (Qld)* without the agreement of the land owner in writing. Submissions addressing the Bill were received as part of the committee's broader inquiry into issues affecting Indigenous economic development in Queensland.

### Committee objectives and scope

- 1.3 The committee was asked to investigate barriers to and opportunities for Indigenous economic development in Queensland, with a particular focus on Cape York.

- 1.4 The geographical and socio-economic context of the Cape York Peninsula and the disadvantaged status of the Indigenous population underpin the issues central to participation in the 'mainstream' economy.
- 1.5 The committee's resources and the reporting deadline mean that a detailed economic analysis is beyond its scope. Nevertheless, the committee believes that the diverse range of primary stakeholders' views was well represented and that the threshold issues around Indigenous economic development have been brought out.
- 1.6 Indigenous economic development is a large and complex issue and this report can only cover part of that wider topic – in this case an overview of the barriers and opportunities, and recommendations to address them. Although this report cannot address all aspects of Indigenous economic development, the committee trusts that the material presented to it and made public will contribute to a greater awareness of the issues surrounding Indigenous economic development and that this material will contribute to better policy outcomes in the future.

### **The 2010 Senate Inquiry and its outcomes<sup>1</sup>**

- 1.7 A previous iteration of the Wild Rivers (Environmental Management) Bill 2010 was considered in the 42nd Parliament. It was introduced by Mr Abbott into the House of Representatives on 8 February 2010 and an identical bill was introduced into the Senate as a private Senator's Bill on 23 February 2010 by Senator the Hon Nigel Scullion. On 24 March 2010, Senator Scullion's Bill was referred to the Senate's Legal and Constitutional Affairs Legislation committee for inquiry. The committee presented its report on 22 June 2010.
- 1.8 The inquiry heard evidence regarding economic opportunities in wild river areas; the compatibility of the Bill with existing law; the applicability of the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP); the Queensland Government's wild rivers consultation process; and issues surrounding the Bill's drafting.
- 1.9 The committee concluded:
- While there might be a need for further information and assistance with development applications, the committee is not persuaded that the Queensland Act substantially interferes with the current or future development aspirations of Indigenous or other

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1 The report itself (hereafter referred to as 'The Senate Report') can be found at [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/wildrivers/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/wildrivers/report/report.pdf)

landowners in wild river areas. Even if it did, the committee does not consider that the Bill provides the comprehensive and considered solution needed to economically and socially empower Indigenous communities in wild river areas. Accordingly, the committee is of the view that the Bill should not be passed by the Senate.<sup>2</sup>

- 1.10 There was a dissenting report by the Liberal/National committee members and a separate set of additional comments by The Greens committee members.

## Pre-existing legislation

- 1.11 There is a wide variety of legislation that is applicable to Queensland and Cape York. Chapter 2 provides an overview of that legislation and the impact they have on the issues under review in this inquiry.

### *Wild Rivers Act 2005 (Qld)*

- 1.12 The *Wild Rivers Act 2005 (Qld)* ('the Act') aims to preserve the natural values of rivers that have all, or most, of their natural values intact and to preserve the natural values of rivers in the Lake Eyre Basin.<sup>3</sup>
- 1.13 Queensland's wild rivers policy is implemented through a regulatory framework that links together the Act, a wild river declaration, the Wild Rivers Code and other regulating acts.<sup>4</sup> The Act requires that other laws consider its objectives when making decisions on development and other activities in a declared wild river area.<sup>5</sup>
- 1.14 Wild river declarations aim to preserve the following natural values:
- hydrological processes (unimpeded runoff, stream flow, aquifer recharge and spring discharge);
  - geomorphic processes (unimpaired movement of sediments along the river system resulting in stable bed and banks and

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2 The Senate, Report, p. 28.

3 *Wild Rivers Act 2005 (Qld)*, <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WildRivA05.pdf>, accessed 8 April 2011.

4 'How Wild Rivers Work' factsheet, <http://www.derm.qld.gov.au/factsheets/pdf/water/wr10.pdf>, accessed 8 April 2011.

5 'How Wild Rivers Work' factsheet, <http://www.derm.qld.gov.au/factsheets/pdf/water/wr10.pdf>, accessed 8 April 2011.

sediment delivery to estuaries, floodplains and downstream reaches);

- water quality (of sufficient physical, chemical and biological quality to meet human and ecological needs);
- riparian<sup>6</sup> function (intact riparian trees, shrubs and sedges to protect stream banks and to provide food and habitat for native animals); and
- wildlife corridors (sufficient areas of natural habitat within and along the river system to allow native fauna to migrate within their natural ranges).<sup>7</sup>

1.15 The Act does this by regulating new development within a declared wild river and its catchment area, and by regulating the removal of natural resources from the area. The Act establishes a framework that includes the declaration of wild river areas that may include:<sup>8</sup>

- high preservation areas – areas within and up to 1km each side of the wild river, its major tributaries and special features (such as floodplain wetlands);
- preservation areas – the wild river areas outside high preservation areas;
- floodplain management areas – floodplain areas with a strong hydrologic connection to river systems (may overlap with a high preservation and/or preservation area); and
- special floodplain management areas;
- sub-artesian management areas – aquifer areas with a strong hydrologic connection to river systems (may overlap with a high preservation and/or preservation area); and
- designated urban areas – a mapped urban area (e.g. towns, settlements, villages), including space for future urban expansion (based on either a town plan or other available information).<sup>9</sup>

1.16 Once a wild river area is declared, certain types of new development and other activities within the river, its major tributaries and catchment area

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6 'Relating to or inhabiting the banks of a natural course of water', Free Online Dictionary, <http://www.thefreedictionary.com/riparian>, accessed 11 April 2011.

7 The Wild Rivers Code 2007, p. 1. [http://www.derm.qld.gov.au/wildrivers/pdf/wild\\_rivers\\_code\\_2007.pdf](http://www.derm.qld.gov.au/wildrivers/pdf/wild_rivers_code_2007.pdf), accessed 8 April 2011.

8 *Wild Rivers Act 2005* (Qld), <http://www.derm.qld.gov.au/wildrivers/legislation.html>, accessed 8 April 2011.

9 'How Wild Rivers Work' factsheet, <http://www.derm.qld.gov.au/factsheets/pdf/water/wr10.pdf>, accessed 8 April 2011, and the *Wild Rivers Act 2005* (Qld), <http://www.derm.qld.gov.au/wildrivers/legislation.html>, accessed 8 April 2011.

are prohibited, while other types must be assessed against this code. Each wild river declaration identifies these developments and other activities.<sup>10</sup>

### Declared wild river areas

1.17 Declarations effective from 28 February 2007 are:

- Fraser Wild River Declaration 2007
- Gregory Wild River Declaration 2007
- Hinchinbrook Wild River Declaration 2007
- Morning Inlet Wild River Declaration 2007
- Settlement Wild River Declaration 2007
- Staaten Wild River Declaration 2007

1.18 Wild river areas declared on 3 April 2009:

- Archer Wild River Declaration 2009
- Stewart Wild River Declaration 2009
- Lockhart Wild River Declaration 2009

1.19 Wild river area declared on 4 June 2010:

- Wenlock Basin Wild River Declaration 2010

1.20 Current wild river declaration proposals:

- Cooper Creek Basin Wild River Area<sup>11</sup>

## Conduct of the Inquiry

1.21 The committee advertised the inquiry through a press release on 8 November 2010 and an advertisement in *The Australian* on 1 December 2010. Details of the inquiry and the Bill were placed on the committee's website.

1.22 The closing date for submissions was Friday, 28 January 2011 but was then extended to Friday 18 February 2011 subsequent to the Queensland floods of January 2011.

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<sup>10</sup> The Wild Rivers Code 2007, p. 1.

<sup>11</sup> Proposed Cooper Creek Basin Wild River Area, <http://www.derm.qld.gov.au/wildrivers/coopercreek/index.html>, accessed 8 April 2011.

- 1.23 A total of 41 submissions and three supplementary submissions were received by the committee and these are listed in Appendix 1. Submissions were placed on the committee's website.
- 1.24 Throughout the inquiry, the committee was mindful of Minister Macklin's request that 'the committee should make all efforts to ensure that a broad range of views are communicated to the committee, especially those of Indigenous people'.<sup>12</sup> The committee has sought to gather views from as many organisations and individuals with an interest in the subject matter relating to this inquiry as possible. In particular, the committee endorsed a program for the public hearings that sought a range of views and opinions about the proposed legislation and visited as many regional communities as was practicable given the adverse weather conditions and time restrictions during the December 2010 – March 2011 period.
- 1.25 Apart from initial and final hearings in Canberra, the public hearings included two series of visits to Brisbane, Cairns, Weipa, Bamaga and Chuulangun Aboriginal Corporation in far north Queensland. The first series was from Monday 29 November 2010 until Wednesday 1 December 2010 while the second was from Monday 6 March until Wednesday 9 March 2011. The open public hearings in Weipa and Bamaga were particularly successful as almost everyone who was present participated in the discussion.
- 1.26 A list of the witnesses who appeared at these hearings is available at Appendix 2, and the Hansard transcripts can be found at the committee's website.<sup>13</sup>

## Structure of the report

- 1.27 Chapter 2 outlines the barriers that exist for Indigenous economic development and how potentially to address them. These include the remoteness of many Indigenous communities; lack of infrastructure; weather and other environmental issues; land tenure issues; the impact of the *Wild Rivers Act 2005* (Qld); the legal framework surrounding

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12 The Hon Jenny Macklin MP, Media Release, 30 September 2011, [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/wild\\_rivers\\_30sept.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/wild_rivers_30sept.aspx), accessed 7 April 2011.

13 Inquiry into Indigenous economic development in Queensland and review of the Wild Rivers (Environmental Management) Bill 2010, <http://www.aph.gov.au/house/committee/economics/WildRivers/hearings.htm>, accessed 1 April 2011.

development in environmentally sensitive areas; and the consultation processes between government and Indigenous people.

- 1.28 Finally, Chapter 3 reviews the Wild Rivers (Environmental Management) Bill 2010 itself and its potential to impact on the *Wild Rivers Act 2005* (Qld), Indigenous communities and the environment should it be passed into law.

## Note on references

- 1.29 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

## Overall finding

- 1.30 The difficult environmental and climatic conditions, remoteness, and the soil conditions of Cape York have hindered the type of development that has occurred across many other parts of Australia. The committee notes that, despite these disadvantages, there is a range of opportunities for Indigenous people to increase their participation in economic activities and that governments at all levels are seeking to maximise them.
- 1.31 In particular, the committee notes the potential for development of industries focussing on the sustainable management of natural resources. The wild rivers ranger program has been a highlight of the inquiry because Indigenous communities can leverage it to build internal capacity. This is already occurring.
- 1.32 More broadly, the Council of Australian Governments is the forum through which all the Australian governments, under Commonwealth leadership, are closing the gap in health, housing, economic participation, early childhood development, and remote service delivery with the Commonwealth Government investing over \$5.75 billion over three years.<sup>14</sup>
- 1.33 Evidence available to the committee confirms that the *Wild Rivers Act 2005* (Qld) does not present a barrier to economic development and does not

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14 'Closing the Gap – The Prime Minister's Report 2011', p. 23, [http://www.fahcsia.gov.au/sa/indigenous/pubs/closing\\_the\\_gap/2011\\_ctg\\_pm\\_report/Documents/2011\\_ctg\\_pm\\_report.pdf](http://www.fahcsia.gov.au/sa/indigenous/pubs/closing_the_gap/2011_ctg_pm_report/Documents/2011_ctg_pm_report.pdf), accessed 27 April 2011.

limit native title rights. Ultimately, the Act is little different from other environmental and planning legislation which is used to regulate development. While the ongoing engagement of Indigenous people is essential, the introduction of Commonwealth legislation overturning state environmental protections and giving unique veto powers to some stakeholders is not the solution to the issues examined during this inquiry.

- 1.34 The issues surrounding *Wild Rivers Act 2005* (Qld) and Indigenous economic development has inspired a lot of passion amongst the interested parties. In particular, the committee was presented with a range of information and views about the consultation and engagement processes under the *Wild Rivers Act 2005* (Qld) creation and implementation. Both the Queensland Government and stakeholders have a role to play in ensuring consultation and engagement is effective. The most effective way to resolve differences and ensure consultation can be strengthened would be for all parties – including the Queensland Government, Indigenous people and the various non-government organisations – to work together to develop policy solutions.
- 1.35 The Queensland Government has already moved to accommodate some of the concerns raised through this committee’s inquiry process. On 9 March 2011, the Queensland Government announced a number of initiatives which included: an Economic Development Mentor Support Network; capacity building for Indigenous local governments; a Strategic Economic Development Plan; and Indigenous Reference Committees<sup>15</sup>, and these can be used as a basis for strengthening engagement with Indigenous communities.
- 1.36 Indigenous communities suffer extreme disadvantage in Cape York with significantly lower life expectancy and much higher rates of unemployment than the Australian average. Similar patterns are repeated Australia-wide for Indigenous people. As long as the barriers to Indigenous development remain, governments must commit themselves to further action.

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15 ‘New Wild Rivers initiative gives power to Indigenous Cape Communities’, Hon Kate Jones, Minister for Environment and Resource Management, Press Release, 9 March 2011, <http://www.cabinet.qld.gov.au/mms/StatementDisplaySingle.aspx?id=73891>, accessed 27 April 2011.

**Recommendation 1**

- 1.37 **The Commonwealth Government continues to address the economic and geographical barriers to Indigenous economic development through its closing the gap programs across Australia and in particular, in Cape York; and the Queensland Government proactively affirms its commitment to addressing Indigenous disadvantage by pursuing place based initiatives for economic participation in Cape York.**