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House Standing Committee on Economics  
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Australia

## **Submission to the Inquiry into Indigenous economic development in Queensland and review of the *Wild Rivers (Environmental Management) Bill 2010*.**

The Australian Conservation Foundation (ACF) welcomes the opportunity to provide comments to the Inquiry into Indigenous economic development in Queensland and review of the *Wild Rivers (Environmental Management) Bill 2010*. ACF is a not-for-profit community organisation committed to inspiring people to achieve a healthy environment for all Australians. For 40 years we have been a strong voice for the environment, promoting solutions through research, consultation, education and partnerships. We work with the community, business and government to protect, restore and sustain our environment.

ACF has a strong and long interest in the future of northern Australia, particularly Cape York Peninsula, and ensuring the future economic prosperity of the region and its communities is ecologically sustainable.

For nearly ten years, ACF has dedicated resources to explore economic development opportunities with regard to areas of competitive advantage for Indigenous communities across northern Australia.

In addition, with partner organisations from both the conservation sector and Indigenous organisations, ACF has worked collaboratively on land tenure reform, land management funding, and a potential future World Heritage nomination process for appropriate areas of Cape York Peninsula.

ACF seeks to ensure these key processes deliver socio-economic outcomes in addition to their environmental outcomes.

ACF does not consider the *Wild Rivers (Environmental Management) Bill 2010*<sup>1</sup> (“**the Bill**”) to provide an appropriate framework capable of delivering an effective and lasting resolution to the issue of Traditional Owner consent on issues affecting them and their land, from the implementation of legislation to any form of development.

## Summary of Recommendations

1. ACF recommends that Australian governments increase investment in effective training, capacity and governance building initiatives, particularly within the land management sector, and ensure that this investment is supported by programs aimed at facilitating greater capacity within communities including, but not limited to:
    - a. Boost Indigenous Protected Areas across the north with a commensurate commitment in long-term funding;
    - b. Boost the Working on Country program with investment from the Closing the Gap budget; and
    - c. Ensure complementary training, capacity and governance development in Indigenous land and sea management initiatives and programs.
  2. The Commonwealth Government supports land tenure reform and the creation of Aboriginal –owned national parks on Cape York Peninsula.
  3. In partnership with the Queensland Government, support tenure resolution with complimentary strategic investment in the delivery of environmental management, cultural empowerment and maintenance, the facilitation of appropriate economic opportunities in the service sector, and the roll out of other initiatives to ‘Close the Gap’ in order to bring tangible long term socio-economic improvements to the region.
  4. Support a Commonwealth Government review of socio-economic issues of the region’s communities and opportunities to address these issues through the World Heritage nomination process. This process could involve a number of components including:
    - a. Investigating opportunities for delivering World Heritage and securing sustainable livelihoods on Cape York Peninsula;
    - b. Identifying policy constraints and developing supportive policy frameworks; and
    - c. Developing a strategic plan to deliver environmentally sustainable and culturally appropriate economies.
- This review should be supported by a funding commitment for the establishment of cultural and conservation economies led by local communities with the integration of sustainable livelihoods with the recognition of World Heritage

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<sup>1</sup> As provided through the Inquiry website here:  
[http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4467\\_first/toc\\_pdf/10258b01.pdf;fileType=app%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4467_first/toc_pdf/10258b01.pdf;fileType=app%2Fpdf)

values, such as through the development and implementation of business plans or business hubs.

5. The Australian Government increases support to Indigenous led enterprises including, but not limited to the environmental service industry through the support of regional hubs delivering natural and cultural resource management and other essential services including quarantine and border security.
6. The Australian Government should assess how the UN Declaration on the Rights of Indigenous People, as it applies to both development and legislation, could be incorporated into Australian law. This process should clarify Indigenous property rights and opportunities for consent mechanisms under Commonwealth, State or Territory laws.
7. That the Commonwealth Government reject the proposed Wild Rivers Bill as:
  - a. It fails to address related environmental protection and management of freshwater ecosystems; and
  - b. Its narrow focus fails to provide a genuine consent mechanism, as articulated in the aforementioned UN Declaration, providing Traditional Owners with consent powers over legislative and development proposals affecting them and their land.

## **Constraints to, and Opportunities for, Economic Development**

### **Constraints**

For Cape York Peninsula, barriers to economic development include remoteness, distance to markets and soil fertility to mention just a few.

For many Indigenous people this also includes access to land and the tenure of that land, the lack of leverage over access and rights to resources on Aboriginal land. This is discussed in more detail on pages 8 and 9.

Constraints also exist in the form of limited literacy, training, capacity and governance. Initiatives to improve these areas are not always delivered effectively nor funded on a long term basis.

Through the use of existing Indigenous organisations and traditional governance structures, the Commonwealth Government's increased commitment to economic initiatives must be matched with commensurate investment in culturally informed and effective capacity and governance building initiatives.

Training, literacy, capacity and governance initiatives must recognise that economic stress, poor job security and/or inadequate infrastructure and resources will serve to constantly undermine community and capacity building initiatives. Only through working with the existing network of Indigenous organisations to implement culturally appropriate programs, in tandem with socio-economic initiatives, will capabilities improve.

The environmental management sector is a key area of employment and growth and as identified by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) as an area of competitive advantage for Indigenous Australians.<sup>2</sup>

### ***Recommendation 1***

- ACF recommends that Australian governments increase investment in effective training, capacity and governance building initiatives, particularly within the land management sector, and ensure that this investment is supported by programs aimed at facilitating greater capacity within communities including, but not limited to:
  - d. Boost Indigenous Protected Areas across the north with a commensurate commitment in long term funding;
  - e. Boost the Working on Country program with investment from the Closing the Gap budget; and
  - f. Ensure complementary training, capacity and governance development in Indigenous land and sea management initiatives and programs.

### **Opportunities**

Land is a central tenet in culture, identity and an economic base for Aboriginal people.<sup>3</sup>

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<sup>2</sup> FaHSCIA (2010) Indigenous Economic Development Strategy (Draft).

Significant effort is being made to return land of high cultural and conservation significance in north Queensland, particularly Cape York Peninsula to Traditional Owners. Under this process new Aboriginal owned national parks are being created and commensurate areas of Aboriginal freehold are also established. This process provides the opportunity for pastoral, tourism, cultural and land management enterprises to be developed.

In addition, ACF considers that World Heritage listing of natural and cultural values in appropriate areas of Cape York Peninsula, with the informed consent of Traditional Owners, has the potential to deliver substantial economic outcomes in tourism, cultural and land management enterprises.

The nomination process should review socio-economic issues of the region's communities and how a World Heritage area can enable these issues to be addressed. Further, as the benefits of 'healthy country, healthy people' are well recognised within Australia<sup>4</sup>, the link between managing Cape York Peninsula's outstanding universal values, and the key role Traditional Owners will continue to play stands to deliver long-term socio-economic outcomes.<sup>5</sup>

World Heritage listing has generated significant economic activity and employment opportunities around Australia.<sup>6</sup> A potential listing on Cape York Peninsula needs to support the priority issue of tenure resolution in the region followed with complimentary strategic investment in the delivery of environmental management, cultural empowerment and maintenance<sup>7</sup>, the facilitation of appropriate economic opportunities in the service sector<sup>8</sup>, and the roll out of other initiatives to 'Close the Gap' in order to bring tangible long term socio-economic improvements to the region.

### ***Recommendation 2***

- The Australian Government supports land tenure reform and the creation of Aboriginal –owned national parks on Cape York Peninsula.

### ***Recommendation 3***

- In partnership with the Queensland Government, support tenure resolution with complimentary strategic investment in the delivery of environmental management, cultural empowerment and maintenance, the facilitation of appropriate economic opportunities in the service sector, and the roll out of other

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<sup>3</sup> Yunupingu G (Ed) (1997) *Our Land is Our Life, Land Rights: Past Present and Future*, University of Queensland Press.

<sup>4</sup> Garnett *et al.* (2009) "Healthy country healthy people: policy implications of links between Indigenous human health and environmental condition", in *The Aust. Journal of Public Administration*, 68 (1) 53-66

<sup>5</sup> Land and Water Australia (2009) *Economic Analysis of investment in Indigenous natural resource management*. Agtrans Research.

<sup>6</sup> Gillespie Economics (2008) *Economic Activity of Australia's World Heritage Areas*, consultants report to DEWHA.

<sup>7</sup> Cultural empowerment and maintenance refers to strengthening existing traditional knowledge systems, which are at the centre of the universally significant values of the region, and the implementation of these knowledge systems to maintain cultural values across the landscape.

<sup>8</sup> This reference to the 'service sector' is intended to cover a wide range of activities, such as tourism, trading, transportation and communication, financial and business services, as well as community, social and personal services including health and education.

initiatives to 'Close the Gap' in order to bring tangible long term socio-economic improvements to the region.

#### **Recommendation 4**

- Support a Commonwealth Government review of socio-economic issues of the region's communities and opportunities to address these issues through the World Heritage nomination process. This process could involve a number of components including:
  - a. Investigating opportunities for delivering World Heritage and securing sustainable livelihoods on Cape York Peninsula;
  - b. Identifying policy constraints and developing supportive policy frameworks; and
  - c. Developing a strategic plan to deliver environmentally sustainable and culturally appropriate economies.
- This review should be supported by a funding commitment for the establishment of cultural and conservation economies led by local communities and the integration of sustainable livelihoods with the recognition of World Heritage values, such as through the development and implementation of business plans or business hubs.

## **Culturally and Environmentally Appropriate Economic Development**

The concept of a 'conservation economy' was developed by the Canadian Ecotrust to foster economically viable, ecologically sustainable and socially or culturally appropriate livelihoods for remote and regional Indigenous communities in North America.<sup>9</sup> The concept has been adapted to Australia where it is currently being applied across the north by Ecotrust Australia.<sup>10</sup>

ACF have produced, with a number of partner organisations, several publications relating to the conservation economy with the later being a government funded proof-of-concept paper, namely *Culturally and Environmentally Appropriate Economies for Cape York Peninsula* (Hill and Turton 2003)<sup>11</sup>, and *A Cultural and Conservation Economy for Northern Australia* (Hill et al. 2008)<sup>12</sup>.

Hill et al. (2008)<sup>13</sup> recognised the need for creative solutions to the challenge of integrating conservation and development throughout northern Australia in a manner that suited the relatively low-productivity landscapes of the north and the unique features of the human communities, particularly the Indigenous communities. The report identified that the

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<sup>9</sup> [www.ecotrust.org/](http://www.ecotrust.org/)

<sup>10</sup> [www.ecotrust.org.au/](http://www.ecotrust.org.au/)

<sup>11</sup> [www.acfonline.org.au/uploads/res/res\\_na\\_economies.pdf](http://www.acfonline.org.au/uploads/res/res_na_economies.pdf)

<sup>12</sup> [www.acfonline.org.au/uploads/res/Land\\_WaterCCEReport.pdf](http://www.acfonline.org.au/uploads/res/Land_WaterCCEReport.pdf)

<sup>13</sup> Hill, R., Harding, E.K, Edwards, D., O'Dempsey, J., Hill, D., Martin, A., and McIntyre Tamwoy, S. (2008). *A Cultural and Conservation Economy for Northern Australia. A Proof of Concept Study*. Land and Water Australia and Australian Conservation Foundation

most suitable sustainability framework for northern Australia was one that takes into account the unique cultures and natural characteristics: a “Culture and Conservation Economy” (CCE).

Essential elements of a Culture and Conservation Economy are:

- Recognition of Aboriginal culture, rights and title;
- Building and support of strong, vibrant, sustainable communities;
- Provision of meaningful work, good livelihoods and sustainable enterprises; and
- Conservation and restoration of the environment.

Many culturally and environmentally sustainable enterprises are emerging throughout northern Australia. The drivers for these seem to be the increasing recognition that land and sea management are growth industries and that it is in the national interest to ensure our northern zone is managed for a variety of purposes including conservation, cultural maintenance, quarantine and border security and tourism.

#### ***Recommendation 5***

- The Australian Government increases support to Indigenous led enterprises including, but not limited to the environmental service industry through the support of regional hubs delivering natural and cultural resource management and other essential services including quarantine and border security.

### **Regulation to manage development in freshwater ecosystems**

ACF recognises and supports the use and value of regulatory mechanisms as a necessary part of managing development and protecting the environment. A number of local, state and federal planning, policy and legislative instruments are the primary mechanisms used to deliver ecologically sustainable development.

Throughout our 40 year history, ACF has called upon and supported governments to enact legislation that has protected some of our most cherished national icons including the Great Barrier Reef, the Wet Tropics Rainforest and Tasmania’s Franklin-Gordon Wild Rivers from over exploitation and inappropriate development.

At the Queensland level we have called for the creation of national parks with Traditional Owner consent under the *Cape York Peninsula Heritage Act 2007* and the introduction of the *Vegetation Management Act 1999* to end broad scale clearing across Queensland.

According to Queensland’s Department of Environment and Resource Management (DERM), the intent of the *Wild Rivers Act 2005* is to regulate development within declared basins. A key function of that regulation is the prohibition of specific forms of development that would result in the most significant impacts on rivers and their ecosystems. These include dams, weirs, river realignment and intensive agriculture within certain zones.

#### **Free, Prior and Informed Consent (FPIC)**

Throughout ACF’s history, the organisation has maintained a consistent approach with regard to respect and recognition of Aboriginal and Torres Strait Islanders as the original custodians of Australia. ACF recognises the rights and interests of Indigenous peoples in

decisions affecting their traditional homelands and the importance of free, prior and informed consent. This is reflected in our policy *Indigenous People's Land and Water*<sup>14</sup>.

In 2009, Australia became a signatory of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration)<sup>15</sup> Free, Prior and Informed Consent (“**consent**”) is explicitly articulated within the UN Declaration, and there are a number of provisions set out as guidelines for states to achieve this consent.

In particular, the UN Declaration states that consent should apply to legislation (Article 19) and development (Article 32) that may affect the Indigenous people or their lands.<sup>16</sup>

The implications of FPIC on states’ policies, projects, procedures and legislation that affect the rights and welfare of Indigenous people is being discussed in a growing number of regional, national and international processes. These processes range from safeguard policies of the multilateral development banks and international financial institutions; practices of extractive industries; water and energy development; natural resources management; access to genetic resources and associated traditional knowledge and benefit-sharing arrangements; scientific and medical research; and Indigenous cultural heritage.<sup>17</sup>

The UN Charter on the Elimination of all forms of Racial Discrimination gave rise to Australia’s *Racial Discrimination Act 1975* (Cth). The Convention on Biological Diversity gave rise to a wealth of national and state conservation measures including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Since Australia’s signing of the UN Declaration on the Rights of Indigenous People in 2009, although not legally binding, there has not been any change in the status of customary rights to resources or consent processes in any national, state or territory legislation.

A key point raised in the Department of Families, Housing, Community Services and Indigenous Affairs draft strategy on Indigenous Economic Development is ‘clarifying property rights’.<sup>18</sup> ACF supports the principle that Traditional Owners are afforded the power to provide free, prior and informed consent with regard to decisions in which they are directly affected. To ensure there is sectoral cohesion and pragmatic progress towards addressing economic disadvantage, ACF supports a process whereby property rights under the *Native Title Act 1993* (Cth) or equivalent State or Territory laws are clarified and amended and that this is reflected in consent mechanisms.

The *Wild Rivers (Environmental Management) Bill 2010* (“**Wild Rivers Bill**”) aims to give Traditional Owners within Queensland’s Wild River areas consent<sup>19</sup> over a Wild River declaration. However it does not provide Traditional Owners with greater leverage or control over their land, and fails to provide any such consent over development.

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<sup>14</sup> ACF Policy 48 *Indigenous People's Land and Water*

<sup>15</sup> United Nations 2006: [www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

<sup>16</sup> Ibid.

<sup>17</sup> Sub-Commission on the Promotion and Protection of Human Rights Working Group on Indigenous Populations, Twenty-third session, 18-22 July 2005. [www2.ohchr.org/english/issues/indigenous/docs/wgip23/WP1.doc](http://www2.ohchr.org/english/issues/indigenous/docs/wgip23/WP1.doc)

<sup>18</sup> Page 16 of FaHCSIA’s draft strategy on Indigenous Economic Development

<sup>19</sup> section 6



If consent mechanisms are to be considered, they should relate to any form of development and all relevant legislation, not simply one piece of legislation with limited application and providing no recourse in relation to development.

The Northern Territory's *Aboriginal Land Rights (Northern Territory) Act 1976* empowers Traditional Owners to decide whether or not a mine can proceed on their land. This was how Traditional Owner, Jeffrey Lea of the Djok clan, had the power to refuse consent for the proposed uranium mine at Koongarra. Queensland's *Aboriginal Lands Act 1991* doesn't afford Traditional Owners such rights. Nor does the proposed Wild Rivers Bill.

ACF does not consider the *Wild Rivers Bill 2010* to provide an appropriate framework capable of delivering an effective and lasting resolution to the issue of freshwater ecosystem protection and consent processes in the development and implementation of such legislation on Aboriginal lands.

Reform of the *Native Title Act 1993 (Cth)* would be a far more efficient and effective method to ensure that consent mechanisms, and even resource rights, is incorporated into decision making and legislation.<sup>20</sup>

A stronger, nationally consistent approach to Native Title, granting resource rights and consent mechanisms to Traditional Owners would likely increase opportunities to access the mainstream economy.<sup>21</sup>

#### **Recommendation 6**

- The Australian Government should assess how the UN Declaration on Rights of Indigenous People, as it applies to both development and legislation, could be incorporated into Australian law. This process should clarify Indigenous property rights and opportunities for consent mechanisms under Commonwealth, State or Territory laws.

### **ACF's Position on Wild Rivers Act (QLD) and Bill (Cth)**

**ACF strongly supports the protection of freshwater ecosystems**, including rivers, across Australia and particularly those of cultural and natural significance on Cape York Peninsula (and throughout Queensland).

In recognition of the social, economic, cultural and environmental cost of repairing degraded river systems such as the Murray-Darling Basin, ACF welcomes the Queensland Government's proactive approach that ensures the ecological integrity of river systems will be maintained for future generations.

**ACF recognises the rights and interests of Indigenous peoples** in decisions affecting their traditional homelands and the importance of free, prior and informed consent.

ACF recognises the need to enhance economic opportunities delivering improved socio-economic outcomes for the regions' Indigenous communities.

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<sup>20</sup> Altman J (2010) *Wild Rivers and Informed Consent on Cape York*, Centre for Aboriginal and Economic Policy Research, ANU.

<sup>21</sup> Ibid.

While a legislative framework providing for Indigenous economic development already exists within the *Cape York Peninsula Heritage Act 2007 (Qld)*, ACF would potentially support further legislative or regulatory provisions that:

- Provide a consent mechanism whether through an Indigenous Land Use Agreement (ILUA) or other process.
- Provide for greater flexibility for Traditional Owners in establishing ecologically sustainable economic enterprises.
- Acknowledge the strong cultural association Traditional Owners have with river systems.

#### ***Recommendation 7***

- That the Commonwealth Government reject the proposed Wild Rivers Bill as:
  - c. It fails to address related environmental protection and management of freshwater ecosystems; and
  - d. Its narrow focus fails to provide a genuine consent mechanism, as articulated in the aforementioned UN Declaration, providing Traditional Owners with consent powers over legislative and development proposals affecting them and their land.

## **Conclusion**

Socio-economic considerations are at the forefront of ACF's environmental advocacy across northern Australia. In ACF's view, the debate around 'Wild Rivers' is a symptom of an inadequate approach to native title at the national level. Strengthening native title, addressing the recognition of Traditional Owners rights to resources and the need to seek free, prior and informed consent on any development proposals would be a far more efficient and effective approach to reform. Such an approach has the potential to deliver greater leverage to Traditional Owners to seek outcomes suited to their needs and aspirations where legislation and developments are proposed.

The proposed Wild River Bill will only add another legislative layer and further exacerbate cross-jurisdictional inconsistencies.

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