

CHAPTER 1

Introduction and overview

Background

1.1 On 25 February 2010, the Senate referred the Wild Rivers (Environmental Management) Bill 2010 [No. 2] (Bill) to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 9 May 2010.¹ On 5 May 2010, the committee tabled an interim report in which it indicated that it required additional time to consider the evidence presented during the course of the inquiry and would present its final report by 30 June 2010. On 16 June 2010, the committee agreed to present the final report on 22 June 2010.

1.2 The Bill was introduced in the Senate as a private senator's bill on 23 February 2010 by Senator the Hon. Nigel Scullion and is identical to a bill introduced in the House of Representatives by the Hon. Tony Abbott MP on 8 February 2010. There was no Explanatory Memorandum for either bill.

1.3 According to Senator Scullion's second reading speech, the Bill will enable 'the Indigenous people of Cape York to use or develop their land as any other land holder may'² and is a response to the Wild Rivers initiative implemented by the Queensland Government in the *Wild Rivers Act 2005* (Qld) (the Queensland Act).

Wild Rivers Act 2005 (Qld)

1.4 In October 2005, the Queensland Parliament passed the Queensland Act with the purpose of 'preserv[ing] the natural values of rivers that have all, or almost all, of their natural values intact'.³ The Queensland Act aims to accomplish this goal by establishing a protective legislative framework, an integral part of which is the declaration of wild river areas under Division 1 of Part 2.

1 Journals of the Senate, No. 112-25 February 2010, p. 3229.

2 Senator the Hon. Nigel Scullion, *Senate Hansard*, 23 February 2010, p. 56.

3 Subsection 3(1) of the *Wild Rivers Act 2005* (Qld).

1.5 Once declared, a wild river area is subject to a number of statutory controls⁴ which outline the requirements for approval of a proposed activity or taking of a natural resource in a particular management area, if permitted. A wild river area includes, or may include, the following management areas:

- 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
- subartesian management areas – aquifer areas with a strong hydrologic connection to river systems (may overlap with a high preservation and/or preservation area).⁵

1.6 The management areas particularly discussed throughout the inquiry were the high preservation areas and preservation areas.

1.7 In relation to high preservation areas:

[N]ew high impact activities cannot occur in [such areas], [but] other development activities can continue in the H[igh]P[reservation]A[rea] providing they do not impact on the natural values of the wild rivers.

High impact activities which are effectively prohibited in the HPA include:

in-stream dams and weirs;

intensive animal husbandry (e.g. feedlots, emu farms);

aquaculture (e.g. hatcheries, grow out ponds);

environmentally relevant activities (except some that are essential for urban areas);

surface mining (except for limited hand sampling in stream and low-impact exploration off-stream); and

intensive agriculture.⁶

4 These statutory controls include the Wild Rivers Code 2007 (Qld), the *Coastal Protection and Management Act 1995* (Qld), the *Environmental Protection Act 1994* (Qld), the *Forestry Act 1959* (Qld), the *Fossicking Act 1994* (Qld), the *Sustainable Planning Act 2009* (Qld), the *Land Protection (Pest and Stock Route Management) Act 2002* (Qld), the *Mineral Resources Act 1989* (Qld), the *Nature Conservation Act 1992* (Qld), the *State Development and Public Works Organisation Act 1971* (Qld), the *Transport Infrastructure Act 1994* (Qld), the *Vegetation Management Act 1999* (Qld) and the *Water Act 2000* (Qld).

5 Subsection 3(2) and section 41 of the *Wild Rivers Act 2005* (Qld). The Queensland Act also identifies two additional management areas: designated urban areas; and nominated waterways, secondary tributaries or streams in preservation areas that have been designated for wild river purposes.

1.8 In relation to preservation areas:

Subject to normal approval processes, development activities may continue to operate, start up, or expand in this area. The P[reservation]A[rea] makes up around 80 per cent of a declared wild river basin.⁷

1.9 The Queensland Department of Infrastructure and Planning has prepared a detailed table summarising typical wild river requirements in high preservation and preservation areas.⁸

Key provisions of the Bill

1.10 The Bill contains four substantive provisions:

- proposed section 4, which states:
 - the Commonwealth relies on its legislative powers under section 51(xxvi) of the Constitution, and any other express or implied legislative Commonwealth power capable of supporting the enactment of the Bill;
 - it is the Parliament's intention that the Bill be a special measure for the advancement and protection of Australia's Indigenous people; and
 - it is the Parliament's intention that the Bill protect the rights of traditional owners of native title land within wild river areas to own, use, develop and control that land;
- proposed section 5, which provides that the development or use of native title land in a wild river area cannot be regulated under the Queensland Act unless the Aboriginal traditional owners of the land agree;
- proposed section 6, which provides that a wild river declaration made before the commencement of the Bill will be valid until a fresh declaration is made with the agreement of the Aboriginal traditional owners of the land or six months elapse from the commencement of the Bill, whichever is the first; and
- proposed section 7, which grants the Governor-General a discretionary power to make regulations for the purposes of the Bill, including:

6 Queensland Department of Environment and Resource Management, *Frequently asked questions – wild rivers*, pp 5-6: see http://www.derm.qld.gov.au/wildrivers/pdf/wild_rivers_web_faqs.pdf (accessed 15 June 2010).

7 Queensland Department of Environment and Resource Management, *Frequently asked questions – wild rivers*, p. 6: see http://www.derm.qld.gov.au/wildrivers/pdf/wild_rivers_web_faqs.pdf (accessed 15 June 2010).

8 Queensland Department of Infrastructure and Planning, *Guide to using the IDAS development application forms: Guide 27 – Development in a wild river area*, Version 1.3 (February 2009), Table 1: see <http://www.dip.qld.gov.au/resources/idas-guide-27.pdf> (accessed 15 June 2010).

- for seeking the agreement of Aboriginal traditional owners under the Bill;
- for negotiating the terms of the agreement; and
- for giving and evidencing the agreement.

Conduct of the inquiry

1.11 The committee advertised the inquiry in *The Australian* newspaper on 10 March 2010 and 24 March 2010. Details of the inquiry, the Bill and the second reading speech were placed on the committee's website. In the absence of an Explanatory Memorandum, there was little additional material available to explain the purpose of the Bill or its key provisions. The consideration of bills by committees (and by the Parliament as a whole) is assisted if they are accompanied by an explanation of the intent and operation of the proposed provisions. In this instance, no such explanation accompanied the bill which was neither helpful nor usual practice.

1.12 The committee contacted 34 organisations and individuals, inviting submissions by 31 March 2010. The committee provided over one month for the lodgement of submissions and, where specifically requested, granted formal extensions to both Indigenous and non-Indigenous individuals and organisations. The committee encouraged and continued to accept submissions and supplementary submissions up to the date of tabling this report.

1.13 A total of 38 submissions were received by the committee and these are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public. The committee held public hearings in Canberra on 30 March 2010 and in Cairns on 13 April 2010. A list of witnesses who appeared at the hearings are at Appendix 2, and copies of the *Hansard* transcript are available through the internet at <http://www.aph.gov.au/hansard>.

1.14 The committee has taken into consideration all organisations and individuals with an interest in the subject matter relating to this inquiry. In particular, the committee endorsed a program for the public hearings that reflected a range of views and opinions about the proposed legislation. The committee believes that it is important to emphasise that the selection of witnesses for the public hearings was to ensure that evidence was collected that both supported and disagreed with the legislation.

1.15 To accommodate a range of individuals and organisations, including Indigenous and non-Indigenous stakeholders, the committee heard from additional witnesses not originally listed on the public hearing programs and extended the Cairns public hearing well beyond its scheduled time for completion. All of these different viewpoints have been taken into consideration in formulating this report.

1.16 The committee refutes in absolute terms the assertions made in certain media articles published during the course of the inquiry that the public hearing programs were unbalanced and that certain organisations were provided 'favourable' treatment.

Acknowledgement

1.17 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearings.

Scope of the report

1.18 Chapter 2 discusses the key issues raised in submissions and evidence.

Note on references

1.19 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.

