

ADDITIONAL COMMENTS BY THE AUSTRALIAN GREENS

1.1 Whilst this inquiry understandably received a wide range of views about the pros and cons of Queensland's Wild Rivers Act, the committee has been tasked by the Senate to inquire into the Wild Rivers (Environmental Management) Bill 2010 [No. 2] (Bill) introduced into the Senate by Senator Scullion. Given the diverse and sometimes contradictory information provided to the committee about various aspects of the Queensland Wild Rivers Act, a far more comprehensive inquiry would be required before the Australian Greens Senators would be in a position to reach definitive conclusions about the operation, administration and application of Queensland's laws in this area.

1.2 The committee's report (paras 2.31 – 2.37) identifies some of the drafting problems with the Bill. Unless these were to be remedied, there is no guarantee that the Bill would operate in a way which is consistent with what those who support the legislation are indicating it would do.

1.3 Given that the Bill deals with native title land and purports to address the rights of native title holders, the Greens believe it would be more appropriate to address these issues via amendments to the *Native Title Act 1993*. This would be far more likely to produce an outcome consistent with what those who support Senator Scullion's legislation say they are hoping to see, namely the requirement to obtain the agreement of Aboriginal people before a Wild Rivers Declaration which applies to their land can be made.

1.4 The committee heard conflicting evidence as to whether the Queensland Wild Rivers Act contravenes the federal Native Title Act. Given the differing legal opinions provided to the inquiry, the Greens do not believe the committee is in a position to express a definitive view on this matter. In any case, given the recent announcement by the Cape York Land Council that they have initiated legal proceedings in the High Court on this matter, it appears the court process will provide an answer to this question.

1.5 Senator Scullion's Bill is silent on the processes which could, or should, be used in obtaining the agreement of what the legislation refers to as 'the traditional owners of native title land'. A number of witnesses to the inquiry noted there is an existing process under the Native Title Act for negotiating and reaching agreements known as Indigenous Land Use Agreements (ILUAs). Given this is an existing and already defined process, the Greens believe it makes sense to have this reflected in any legislative changes which seek to require the consent or agreement of Aboriginal people in regards to Wild Rivers Declarations.

1.6 This reinforces the Greens view that it makes more sense from both a policy and a legislative perspective for the issues raised in the Senator Scullion's legislation to be dealt with through amendments to *Native Title Act 1993* which already contains clearly defined processes, rather than through a new stand alone piece of law which contains no mention of what processes would be required in obtaining and defining agreement.

1.7 The desirability for this is reinforced by the Greens view that any change to the native title rights of Aboriginal and Torres Strait Islander peoples should apply nationally, rather than only in one part of one state, and even then only in regard to the operation of a single piece of Queensland legislation. As Professor George Williams told the committee:

[I]t is generally preferable to pass a law that deals with these issues across the country rather than focus on a particular area...That is because it can set up two classes of rights for Aboriginal people in one area and not others. My own view is that if there are important rights involved...then they ought to be protected Australia-wide.¹

1.8 In his submission to this inquiry, Professor Jon Altman stated:

[I]n terms of Indigenous policy, the proposals in the Wild Rivers Bill are important and should be strongly supported. However, unless such provisions are extended Australia-wide this change will constitute Cape York bioregion-specific legal exceptionalism. This is hardly appropriate given that the Closing the Gap framework applies nation wide.²

1.9 Some may find it surprising that the Liberal Party, which sought to significantly reduce the rights of Aboriginal and Torres Strait Islander people under the Native Title Act, is now putting forward legislation which seeks to expand the rights of native title holders. However, the Greens welcome the Liberal Party's commitment to increasing the rights of native title holders as Senator Scullion's legislation (and the identical legislation introduced by the Hon. Tony Abbott in the House of Representatives) seeks to do.

1.10 The Greens support amending the Native Title Act so that it reflects the increased rights of native title holders that the Liberal Party is proposing. Those increased rights should be available to all native title holders across the country and in all circumstances, rather than only on Cape York and only in regard to one particular Queensland law.

1.11 As the committee's report notes, many submissions and witnesses to this inquiry also raised the United Nations Declaration on the Rights of Indigenous Peoples and in particular, the principle of 'free, prior and informed consent' which is detailed in Article 19 of that Declaration. The committee is of course correct to note

1 *Committee Hansard*, 30 March 2010, p. 16.

2 *Submission 14*, p. 4.

that the Declaration and the consent principle contained within it is not binding in Australian law. However, the Greens believe we as a nation should not indicate we support international declarations unless we are prepared to make a good faith effort to implement them in our legislation and administrative practices.

1.12 Whilst the inquiry heard differing views about the adequacy of the consultation processes followed by the Queensland Government under its Wild Rivers law, and also about the adequacy or otherwise of the consultation processes followed by the Liberal Party in putting together the Bill which is the subject of this inquiry, the submission from Australians for Native Title and Reconciliation (Qld) makes the point that:

...the Process of Consultation is fundamentally different from the Principle of Consent and one does not automatically lead to the other. Nor is consultation a mandate for final decision making, nor a replacement for free, prior and informed consent.³

1.13 Professor Altman's submission to the Committee notes:

In Australia, free prior informed consent provisions only exist under the Aboriginal Land Rights (Northern Territory) Act framework, and even here there are national interest override provisions although these have not been invoked in the 33 years since this law was passed. In other jurisdictions (except Western Australia) under State land rights laws there are other specific forms of consultation and negotiation possible.⁴

1.14 The Native Title Act framework does not provide native title groups free prior informed consent rights. Instead, under the future acts regime only a right to negotiate at best (with a window of opportunity restricted to six months) and a mere right of consultation, at worst are provided.

1.15 Quite clearly, our Native Title Act is not yet consistent with the important principle of consent contained with the UN Declaration. As the Declaration was only recently adopted internationally, and only supported at federal government level in Australia even more recently, it is not surprising that we have yet to fully adapt our laws and procedures to ensure they reflect the content of the Declaration. However, this inquiry and the issues raised by it have provided a reminder that it is time for Australia, and in particular the federal Parliament, to start working on this task.

1.16 The Greens have consistently supported the UN Declaration on the Rights of Indigenous Peoples and also supported the current Australian government's decision to sign the Declaration. Although the Liberal Party opposed the Declaration when in government, and continuing public statements would suggest their official policy is to continue to oppose it, the Greens none-the-less welcome the support which Liberal

3 *Submission 31*, p. 2.

4 *Submission 14*, p. 4.

Party Senators have expressed throughout this inquiry for the principle of free, prior and informed consent as contained in the Declaration.

Recommendation 1

1.17 Given the flaws contained in Senator Scullion's Bill, the Senate should not pass the Bill, but should instead amend the *Native Title Act 1993* to ensure the stated intent of Senator Scullion's Bill (requiring agreement from native title holders to government legislation or determinations which affect their lands) is properly defined and equally available to all Aboriginal and Torres Strait Islander people across Australia.

Recommendation 2

1.18 That the Senate resolve to initiate a process aimed at ensuring the content of the UN Declaration of the Rights of Indigenous Peoples is reflected in government laws, processes and practices, with priority given to examining how the principle of free, prior and informed consent can be consistently and effectively applied.

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