Abbott's bill would reverse the injustice of Wild Rivers laws
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The Weekend Australian
3–4 April, 2010

The Senate's legal and constitutional affairs committee this week started its inquiry into Tony Abbott's private member's bill, which seeks to override the Queensland government's Wild Rivers Act 2005.

It is one year since the Queensland government announced on April 3 that it had made the first declarations of wild river areas in Cape York Peninsula.

There are serious questions about the validity of these declarations. They were approved by the Governor on April 2 last year, only 12 days after the Queensland state election. The Natural Resources Minister who purportedly made the declarations, Stephen Robertson, had been appointed only eight days earlier.

The Wild Rivers Act requires the minister to consider the results of community consultations and public submissions before deciding whether to declare a wild river area. The minister who decides to make the declaration must be the same person who has complied with the legislative responsibility to consider submissions and the outcomes of consultations.

Before last year's Queensland election, the relevant minister was Craig Wallace.

If the legislative responsibility to properly consider public submissions was performed, it could only have been performed by Wallace ahead of the election.

The declarations were already finalised and ready to go long before Robertson became minister.

We do not know whether Wallace exercised the power to decide to make the declaration.

The Queensland government has since claimed that it was Robertson who made the decision to declare the wild river areas under section 15, and that he did this on April 1 last year.

We need to be assured that legislative requirements were met. Correspondence between Queensland bureaucrats obtained under Freedom of Information laws shows that the declarations were already proceeding to the Governor in Council on March 30 last year, two days before they were supposedly declared by Robertson.

Why is this important? The implementation of the Wild Rivers Act is also at issue.

Two examples illustrate the injustice of the Wild Rivers Act and its implementation. Section 15 of the act stipulates that the minister's decision can be reviewed only if the minister decides not to make a declaration. If he does decide to make a declaration, the minister does not have to provide any reasons for his decision.

Those who have questions about the minister's decision have no recourse.

The second example concerns decisions about the width of buffer zones from riverbanks where activities are proscribed. The legislation contemplates that the width of buffer zones is to be determined by relevant scientific information and the public is to be consulted.

Government documents obtained under FoI legislation have disclosed that buffer zones relevant to mining and petroleum exploration activities were subject to an agreement struck between the Queensland government, the Queensland Resources Council and the Wilderness Society.

These setbacks from riverbanks are far more lenient for miners than for indigenous interests, in some latter instances just 50m from a waterway in a preservation area.

There are three ways in which Abbott's bill would restore the rights of indigenous people in Cape York and allow us to continue our reform agenda. First, the bill would enhance the land rights of the native titleholders of Cape York Peninsula and enable them to negotiate with the state government so they provide free and informed consent to arrangements to protect the rivers of Cape York Peninsula.

The Queensland legislation offends the commonwealth's Native Title Act 1993-98, enacted by the Keating Labor government as an act of historic justice in 1993. For the Queensland government and environmental groups to claim the Wild Rivers Act does not affect native title, they must believe title is restricted to so-called traditional activities, confined to hunting and gathering. But in many cases native title is a full property right analogous to freehold.

It is remarkable that this bill - which enhances native title - is proposed by the conservatives. The resistance of the Coalition to native title in the past resulted in amendments in 1998 during the Howard government, which reduced the rights of native titleholders. But the weakening of the rights of native titleholders vis-a-vis external development has had the perverse consequence of weakening the rights of native titleholders to undertake their own economic development.

The conservative side of politics has been late in waking up to this effect. However, for anyone concerned about honouring indigenous rights, especially land rights, it is not a matter of who is proposing to honour and enhance the rights but whether the proposal does indeed achieve the honourable result. Furthermore, this bill is consistent with the commonwealth government's commitments as a signatory to the International Declaration on the Rights of Indigenous Peoples.

The declaration says governments shall consult and co-operate in good faith with indigenous peoples to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. It also states 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. The wild river laws contravene both these articles.

There is an Australian law, a well-established mechanism for governments and other parties to obtain the free, prior and informed consent of indigenous peoples in relation to matters affecting their lands: indigenous land use agreements under the Native Title Act.

The Queensland government should have negotiated and settled indigenous land use agreements with native titleholders as part of the process of putting in place environmental protection provisions for rivers.

Finally, Abbott's bill puts the indigenous reform agenda in Cape York Peninsula back on track. The Queensland Wild Rivers Act derails our reform agenda. After 20 years of land rights gains and government progress, indigenous people in Cape York Peninsula are forced to contemplate a restrictive economic future shackling us to continuing welfare dependence.

The most perverse effect of Queensland's wild rivers scheme is that it will make smaller-scale environmentally sustainable developments more difficult while not preventing large-scale industrial developments, such as mining. It will be large-scale external developers, able to pay their way through the heavy transaction costs imposed by the layers of red tape - and able to lobby their way around George Street, Brisbane - that will be able to operate.

This is the hardest point to explain in this debate. The Queensland government claims the Wild Rivers Act allows indigenous economic development. But in reality, jumping through all the bureaucratic hoops is prohibitive to Cape York people.

The green bureaucrats who will have the real power, who are they? They are the public service arm of the extreme preservationist movement that made the deals about the future of our land with the Queensland government in the first place.

These are the reasons the bill to override the Wild Rivers Act must be supported by the commonwealth parliament.

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