

2010-2011

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Wild Rivers (Environmental
Management) Bill 2011**

No. , 2011

(Senator Scullion)

**A Bill for an Act to protect the interests of
Aboriginal people in the management, development
and use of native title land situated in wild river
areas, and for related purposes**

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1 **A Bill for an Act to protect the interests of**
2 **Aboriginal people in the management, development**
3 **and use of native title land situated in wild river**
4 **areas, and for related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act may be cited as the *Wild Rivers (Environmental*
8 *Management) Act 2011*.

1 **2 Commencement**

2 This Act commences on the day on which it receives the Royal
3 Assent.

4 **3 Definitions**

5 In this Act:

6 **Aboriginal land** means:

- 7 (a) Aboriginal land under the *Aboriginal Land Act 1991* (Qld);
8 (b) land where native title exists;
9 (c) a lease under the *Aborigines and Torres Strait Islanders*
10 *(Land Holding) Act 1985* (Qld);
11 (d) deed of grant in trust land under the *Land Act 1994* (Qld)
12 granted for the benefit of Aboriginal people;
13 (e) a reserve under the *Land Act 1994* (Qld) for a community
14 purpose that is, or includes, Aboriginal purposes;
15 (f) freehold, or a term or perpetual lease under the *Land Act*
16 *1994* (Qld), held by, or in trust for, an Aboriginal person or
17 an Aboriginal corporation under the *Corporations*
18 *(Aboriginal and Torres Strait Islander) Act 2006* (Cth);
19 (g) the Aurukun Shire lease under the *Local Government*
20 *(Aboriginal Lands) Act 1978* (Qld).

21 **land** includes waters.

22 **native title land** means land in which native title exists.

23 **owner** means:

- 24 (a) for Aboriginal land under the *Aboriginal Land Act 1991*
25 (Qld)—the grantees of Aboriginal land under that Act;
26 (b) for land where native title exists—native title holders under
27 section 224 of the *Native Title Act 1993*;
28 (c) a lease under the *Aborigines and Torres Strait Islanders*
29 *(Land Holding) Act 1985* (Qld)—the lessee;
30 (d) deed of grant in trust land under the *Land Act 1994* (Qld)
31 granted for the benefit of Aboriginal people—the grantee;

- 1 (e) a reserve under the *Land Act 1994* (Qld) for a community
2 purpose that is, or includes, Aboriginal purposes—the trustee
3 of the reserve;
- 4 (f) for freehold held by, or in trust for, an Aboriginal person or
5 an Aboriginal corporation under the *Corporations*
6 (*Aboriginal and Torres Strait Islander*) *Act 2006* (Cth)—the
7 registered proprietor under the *Land Title Act 1994* (Qld);
- 8 (g) for a term lease or perpetual lease under the *Land Act 1994*
9 (Qld) held by, or in trust for, an Aboriginal person or an
10 Aboriginal corporation under the *Corporations (Aboriginal*
11 *and Torres Strait Islander) Act 2006* (Cth)—the lessee;
- 12 (h) the Aurukun Shire lease under the *Local Government*
13 (*Aboriginal Lands*) *Act 1978* (Qld)—the Aurukun Shire
14 Council.

15 **register** means the Register established and maintained under
16 Part 7 of the *Native Title Act 1993*.

17 **regulated** means regulation of the development or use of land and
18 includes any prohibition of, or restriction on, the development or
19 use of land.

20 **relevant Queensland legislation** means the *Wild Rivers Act 2005*
21 (Qld) and includes future legislation amending, or substituted for,
22 that Act.

23 **wild river area** means an area in which the relevant Queensland
24 legislation regulates, or purports to regulate, the development or
25 use of land.

26 **wild river declaration** means a declaration under relevant
27 Queensland legislation.

28 **4 Constitutional basis and object of Act**

- 29 (1) This Act relies on:
30 (a) the Commonwealth's legislative powers under
31 paragraph 51(xxvi) of the Constitution; and

Section 5

- 1 (b) any other express or implied legislative power of the
2 Commonwealth capable of supporting the enactment of this
3 Act.
- 4 (2) It is the intention of the Parliament that this Act be a special
5 measure for the advancement and protection of Australia's
6 indigenous people.
- 7 (3) In particular, it is the intention of the Parliament that:
8 (a) this Act protect the rights of traditional owners of Aboriginal
9 land within wild river areas to own, use, develop and control
10 that land; and
11 (b) should the enactment of this Act result in the loss of
12 employment by persons employed or engaged to assist in the
13 management of a wild river area then the Commonwealth
14 Government should provide employment to those persons in
15 accordance with details specified in the regulations.
- 16 Note: Paragraph 51(xxvi) of the Australian Constitution provides that the
17 Parliament has power to make laws with respect to "the people of any
18 race for whom it is deemed necessary to make special laws".

19 **5 Agreement of owner required**

20 The development or use of Aboriginal land in a wild river area
21 cannot be regulated under the relevant Queensland legislation
22 unless the owner agrees in writing.

23 **6 Obtaining agreement of native title holders**

24 The agreement under section 5 of an owner of land where native
25 title exists may be obtained by the registration:
26 (a) under section 24BI of the *Native Title Act 1993*—of an
27 indigenous land use agreement (body corporate agreement)
28 which includes a statement to the effect that the parties agree
29 to an area of land being regulated; or
30 (b) under section 24CK or 24CL of the *Native Title Act 1993*—
31 of an indigenous land use agreement (area agreement) which
32 includes a statement to the effect that the parties agree to an
33 area of land being regulated.

1 **7 Transitional provision**

2 Despite section 5, a wild river declaration made before the
3 commencement of this Act continues to apply to Aboriginal land to
4 which it is expressed to apply until the earlier of:

- 5 (a) for an area of Aboriginal land—a new declaration is made
6 with the agreement of the owner of the Aboriginal land; or
7 (b) when 6 months elapse from the commencement of this Act.

8 **8 Regulations**

- 9 (1) The Governor-General may make regulations for the purposes of
10 this Act.
- 11 (2) Without limiting subsection (1), the regulations may prescribe
12 procedures:
- 13 (a) for seeking the agreement of an owner under this Act; and
14 (b) for negotiating the terms of the agreement; and
15 (c) for giving and evidencing the agreement; and
16 (d) for the continued employment of all existing Aboriginal
17 people and other people in the implementation in the
18 purposes of this Act.