



Dissenting report

Introduction

Indigenous Queensland communities, especially those in Cape York, face significant challenges due to their profound isolation, a history of underdevelopment and a sore lack of meaningful employment and training opportunities.

These communities represent the most disadvantaged in Queensland, so are deserving of considered and comprehensive government policies which encourage their development and seek to ensure their long-term sustainability.

While any such policies must include measures to address the widely-acknowledged gap between Indigenous and non-Indigenous communities in areas such as health and education, there is also a pressing need to examine the extent to which certain barriers may prevent Indigenous communities pursuing economic development in the short and medium terms.

Certainly, given the extremely limited prospects for Indigenous youth in these communities, failure to urgently acknowledge and remove impediments to economic development will at best perpetuate the cycle of disadvantage and at worst perhaps lead to the eventual disbandment of these communities through attrition to populated centres.

Following a better understanding of the obstacles faced by these communities, it is essential to then facilitate the creation of private sector opportunities enough to meet the aspirations of Indigenous people rather than limit the prospect of employment to the State's ability to fund public administration positions.

The Coalition members of the House of Representatives Standing Committee on Economics (the Committee) appreciates the opportunity to inquire and report on

the barriers to Indigenous economic development and to make recommendations which would see Indigenous people afforded the same opportunities as other Queensland landowners to benefit from their natural assets and to invest in their futures.

Background

Much of Queensland's wider economic development is due to the mining industry which has created countless jobs, invested in the education and training of thousands of employees, driven the growth of communities adjacent to operations and realised an economic benefit for both investors and the State.

Notwithstanding the economic benefits of mining, a range of legislative instruments and regulations exist to temper activity by ensuring applications to carry out such activity consider the environmental impacts of doing so. In Queensland, for example, the *Environmental Protection Act (Qld)* 1994 requires a comprehensive analysis of economic, social and environmental implications before any application is considered for approval.

This balanced approach to development has - up until 2005 - provided developers with a reasonably transparent and consistent approach to exploratory activity across Queensland. It has also gone some way to mitigate investment risk by prescribing environmental standards whose cost can be incorporated into feasibility studies and business cases.

The uniform way in which approvals were treated across Queensland was abandoned with the introduction of the *Wild Rivers Act (Qld)* 2005 (the Act) purportedly intended to ensure wild river areas are protected from destructive development.

While the Coalition members of the Committee acknowledge and share a desire to protect the natural value of these areas, it is our view the Act was brought into effect, not out of any demonstrated need, but as a political response by the Queensland Labor Government to the ideological campaign of the Greens and the Wilderness Society. Coalition Members of the Committee view the consequence of this political decision to be a catalyst for the exchange of preferences between the Greens and the Labor Parties in Queensland.

Given the distinct lack of demonstrable need for this legislation, it is clear to Coalition Members based on testimony and evidence provided to the Committee that consent from indigenous communities was not obtained prior to enactment.

This legislation has created insurmountable barriers to any form of worthwhile Indigenous economic development whether it could be demonstrated to have a negligible environmental impact or not.

Being that many wild river areas are subject to native title it then follows, in the view of the Coalition, Indigenous communities in these areas are in effect excluded from pursuing investment through mining, which is guaranteed to generate employment opportunities and has demonstrated an ability to generate wealth.

Perversely, by specifically preventing Indigenous landowners from benefiting from their assets, the Queensland Government would seem to have legislated discrimination, entrenched disadvantage and undermined many principals of native title.

Accepting evidence from witnesses about the ability for the mining industry to create employment and training opportunities for Indigenous people in short order, the Coalition members of the Committee have come to view the Act as possibly the most immediately-addressable and significant barrier to economic development for these communities.

If the *Wild Rivers Act (Qld) 2005* presents the greatest barrier to the economic development of Indigenous communities in wild rivers areas, then the passing of the *Wild Rivers (Environmental Management) Bill 2010* (the Bill) provides communities with the best opportunity to fulfil their aspirations.

Significantly, the Bill is not intended to prevent those communities who wish the Queensland Government to continue to regulate the development and use of their land from doing so. Instead, it simply provides communities with the right and ability to benefit from their natural assets – including resources, for example – in a manner which is consistent with the environmental planning regulation to which any other project would otherwise be subject.

Barriers to economic development

Prima facie rejection of any social or economic development

The *Wild Rivers Act (Qld) 2005*, in effect, places a blanket prohibition on willing Indigenous communities from realising economic benefits inherent in their land so defined under native title legislation. As such, members of these communities are unnecessarily encumbered when seeking to create meaningful employment and training opportunities for locals, who otherwise must relocate to distant populated centres or, alternatively, completely withdraw from the labour force.

Of significant concern to the Coalition members of the Committee is the Act's consideration of environmental impacts exclusively, and so, by definition, precluding any assessment of the likely economic or social benefits the development or use of wild rivers area land may provide to local Indigenous communities.

By overriding existing planning instruments which consider all of these factors, the Act represents a barrier which cannot be overcome through any amount of Indigenous consultation notwithstanding the Queensland Government's assurances to the contrary.

The extent to which the Act functions as a deterrent for any level of activity was revealed during the testimony of Mr Scott Buchanan, a member of the Queensland Department of Environment and Resource Management's Wild Rivers Team.

Mr CIOBO—In the Queensland government's perspective, the knowledge base that would enable the traditional owner to prove that they could undertake those activities without impacting in a negative way—can I also ask whether impacting in a negative way is a net negative impact or is that just a requirement to demonstrate no negative impact?

Mr Buchanan—No negative impact.

Mr CIOBO—So any negative impact at all would effectively void the application.

Mr Buchanan—That is right.¹

Arbitrary sterilisation of usable land

The Committee considered evidence from Ms Frances Hayter, Director of Environment and Social Policy at the Queensland Resources Council, relating to the manner in which the Act prevents development of usable land if any part of the useable land contains within it any "special features".

Given the Queensland Government provides no guidance as to what areas may be so excluded prior to an exploratory company having incurred significant expenses, there are significant disincentives for operators to consider making investments in wild river areas.

This, of course, is an issue as it may prematurely lead investors to deem a project as unfeasible where it would otherwise have been able to consider strategies to

¹ Mr Scott Buchanan, Committee Hansard, Queensland Department of Environment and Resource Management – Wild Rivers Team, 9 March 2011, p.55

mitigate environmental concerns while still able to deliver an economic benefit to the community.

Mr CIOBO—Is it possible to know prior to submitting an application in broad terms which special features are likely to be declared or have been declared so that an assessment can be made about whether to even lodge an application, or is that something that will only come as part of the application process?

Ms Hayter—You would not know which ones were going to be declared until you had a declaration proposal and then when that is in there you cannot lodge an application over those areas. The special features effectively are high-preservation areas—I am not trying to go too deep into the legislation—so effectively you cannot apply for those areas anyway. The short answer is: no, you would not know, but on the other hand if you do your environmental impact assessment process I am sure those values would be identified whether or not they had a particular name.

Mr CIOBO—In other words, once the declaration happens, a prospective miner would know immediately that there is no point in lodging an application because of the special features and the high-preservation areas—

Ms Hayter—Depending on how much—

Mr CIOBO—Yes, depending on how much it impacts on the actual site.²

CHAIR—I am not trying to be controversial at all. I am just going through your arguments with you—that is all at this stage. Let us talk about a more practical example—Cape Alumina and the Wenlock River. What is your view about what the environmental effects would have been if that proposal had gone ahead and can you give us some details of the benefits that Indigenous Australians would have received from that mine going ahead?

Ms Hayter—The absolute potential impact of the mine was never determined. The company had started its EIS process but did not complete it because a decision was made about setback areas from significant features. Those decisions effectively sterilised the significant portion of their ore body, so the determination of the impacts and the consideration of potential mitigation measures

² Ms Frances Hayter, Committee Hansard, Director of Environment and Social Policy, Queensland Resources Council, 9 March 2011, p.31

were never fully completed. So I cannot answer that part of the question. I know that they were working through an agreement with the local Indigenous people. I cannot recall whether anything was formally signed, but there was certainly an agreement and it was based on a number of elements. One of those elements related to jobs and, I think, other supporting opportunities in education and training.³

Ms Hayter noted the operation of the Act has ruled out further Indigenous employment opportunities in Cape York – an area of particular concern and the subject of this inquiry – and so would seem at odds with both the Commonwealth Closing the Gap strategy and objectives of this inquiry.

Ms Hayter – ...Our view is that anything that has the potential to impact on economic opportunities for Indigenous people is not desirable and in fact would suggest that the wild rivers is contradictory to the Commonwealth's Closing the Gap strategy. We already have the example of Cape Alumina, which was not able to proceed on Cape York because of the Wenlock declaration. Also, as mentioned in our submission, the Queensland Resources Council has a memorandum of understanding with the state government. We are renewing that and it will be a tripartite arrangement for the first time, with the Commonwealth government, which we strongly support. It is very positive. Again, the focus of that is increasing Indigenous employment and business development opportunities within the resources sector.

The first round of work in that particular project has been an initiative based in north-west Queensland. The next tranche of wild rivers declarations is anticipated to be in the Lake Eyre Basin, which interestingly covers about a third of Queensland, so we are not talking about insignificant coverage. We have already had indications from at least one of our companies that one of the declarations has significant potential to impact on an expansion of that mine, and it is a large mine. Part of that program is to get our members to work on increasing Indigenous opportunities. If the expansion cannot proceed, it obviously precludes that happening.⁴

³ Ms Frances Hayter, Committee Hansard, Director of Environment and Social Policy, Queensland Resources Council, 9 March 2011, p.28-29

⁴ Ms Frances Hayter, Committee Hansard, Director of Environment and Social Policy, Queensland Resources Council, 9 March 2011, p.26-27

Bureaucratic barriers to economic development

The Coalition took particular note of testimony from Mr Terry Piper, Chief Operating Officer of the Balkanu Cape York Development Corporation, regarding the tendency for added bureaucracy to actively discourage Indigenous people from investigating opportunities for any form of economic development.

Mr Piper highlighted the *Wild Rivers Act (Qld) 2005* as not only a barrier to the carrying out of economic development per se, but also as seriously limiting to the aspirations of Indigenous people.

Ms O'DWYER—... I was wondering if you could perhaps elaborate a bit further on the extra layers of regulation that wild rivers imposes in trying to get up an economic project in the region.

Mr Piper—I will give an example. The Lamalama people negotiated to get their land back at Running Creek. A condition of that was that the state said, 'We want a nature refuge over that.' So that imposes a layer of regulation over the Lamalama people. They agreed. It was done by consent. Conservation arrangements have historically been done by consent on Cape York. So there was a nature refuge. But then over the top of that is now a wild rivers declaration. So you have yet another layer of regulation. Over the top of that is potentially a coastal protection plan. You have yet another layer of regulation. Then there is the aspiration of the conservation movement to have world heritage on Cape York—a layer of federal legislation over the top of that. It is killing people on Cape York; it is death by a thousand cuts. People need to know the regulations, particularly when the government's commitment is to return land to traditional owners for economic development. In that deal they have already agreed to areas to become national park and they are getting their land back for economic development and only finding that that has been taken away by various layers of regulation.

Ms O'DWYER—Is it your view then that people simply will not pursue a number of projects that they would have considered as a result of the fact that it would be too difficult to go through all those layers of regulation? Rather than being rejected under the wild rivers legislation they simply will not progress economic development projects because they think it is too hard?

Mr Piper—It is much too hard when you are living in areas like Cape York and you need to get legal advice to be able to work

through what a wild rivers declaration means. You probably need to get a surveyor to have a look at where you fall within the declaration, you most likely need professionals to come and give environmental advice so that you can comply with the declaration, you need meetings amongst your people and you need to work with commercial people to get your development up. You can spend many, many thousands of dollars on that, only to find that it gets knocked back in the end.⁵

Opportunities for sustainable and environmentally sound economic development

Genuine economic development

The *Wild Rivers (Environmental Management) Bill* 2010 introduced by the Leader of the Opposition, the Hon Tony Abbott MP, and referred to this Committee for comment, provides Indigenous communities with the option to pursue investment capable of creating employment opportunities far in excess of those promised by the Queensland Government.

Further, it is the view of the Coalition members that encouragement of private investment – subject to the environmental conditions applicable elsewhere in Queensland – is a superior policy option to create long-term employment given the expected life of mining operations.

This concern was brought to the fore during the testimony of Mr John Bradley, Director-General of the Queensland Department of Environment and Resource Management, when he admitted the much-lauded rangers programme could be threatened by funding cuts and, therefore, could not be considered sustainable.

Mr BUCHHOLZ – It is a perplexing issue and we have a range of views but we are unanimous on the success of the rangers program up there. In your opening comments you spoke to the permanency of that program. When speaking with the rangers on the ground, they are of the opinion that it is linked to a funding round and that they are not permanent. Can you expand on that ambiguity?

⁵ Mr Terry Piper, Committee Hansard, Chief Operating Officer, Balkanu Cape York Development Corporation, 29 November 2011, p.16

Mr Bradley—I will take a step back. One of the things we were trying to do when the wild river rangers program was initiated was to build capacity in local communities by engaging local community service providers—often the council is a provider of that service—and to engage the wild river rangers in their local area. Very often wild river rangers identify with their community rather than as part of a whole of state approach. They are very strongly tied to their country and being back on their country. So we try to engage through that outsourced approach through local service providers but one of the consequences is that you then have those rangers in positions where they are not directly engaged by the state and therefore do not have the permanency of public servants or other state employees.⁶

Given the terms of reference which call for an investigation into options for facilitating the economic development of Indigenous people, the Coalition members underscore the failure of current programmes to satisfy this objective.

Failure of the Wild Rivers (Qld) Act 2005 to create opportunities

The Government members of the Committee and other witnesses have pointed to existing approvals and mining activity as a validation of the Act. Unfortunately, they have failed to consider the Act has curtailed green field mines - arguably better able to use low impact techniques - progressing from the exploratory phase. As such, they have underserved the long term interests of the Indigenous communities and discouraged the adoption of environmentally-friendly mining practices.

Ms Hayter—Yes, but what we are talking about is a disincentive for exploration.

Mr Barger—The other point that it is important to make about that list of names that you ran through is that a lot of those are existing operations. They are existing mines that are saying, 'What is the next ore body that is going to sustain my operation? What gives me an extra 15 years or 20 years, front of life, for my mine?' Where the deterrent value is strongest is in the greenfields explorations. They are the people using new technologies, and increasingly they are low impact, so it is you-beaut laptop things in aeroplanes

⁶ Mr John Bradley, Committee Hansard, Queensland Department of Environment and Resource Management, 9 March 2011, p.62

flying over, rather than the traditional sort of rock pick exploration. Again, the deterrent value is largest at the smallest end of the exploration market, which is the greenfields stuff, looking for new minerals, new techniques and new modelling approaches. That is where the deterrent is strongest and that is where the longterm economic impact is perhaps greatest.⁷

Conclusions

The *Wild Rivers Act (Qld) 2005* (the Act) has created a discriminatory development approvals process which places an inequitable regulatory burden on native title holders who may wish to encourage investment in areas proclaimed, or which may be declared in the future, as wild river areas.

Given existing Queensland and Commonwealth legislation already provides for environmental factors to be considered when granting approvals for projects, it is the view of the Coalition the Act is an unnecessary and costly layer of bureaucracy.

Bureaucracy, of course, has been difficult for Indigenous communities to navigate in the past and has compounded their difficulties to understand investment opportunities.

Additionally, as the Act has undermined guaranteed employment and training opportunities for Indigenous people – and discouraged many businesses from offering to do so in the future – the Coalition maintains its effect is to prevent Indigenous communities from furthering their economic development through access to local long-term employers and education.

The Act and its implementation to date are clearly at odds with the Commonwealth and Queensland Government's public undertakings to improve outcomes for Indigenous people in their communities.

Furthermore, the testimony and evidence clarifies the legislation is illegitimate given there was not consent from indigenous peoples prior to the passage of the legislation.

As such, Coalition Members of the Committee are of the view this legislation should be repealed.

⁷ Mr Andrew Barger, Committee Hansard, Director of Industry Policy, Queensland Resources Council,

9 March 2011, p.34-35

Recommendation 1

For the reasons outlined above, Coalition members of the committee recommend the Queensland Parliament repeal the *Wild Rivers Act (Qld) 2005*.

In the absence of political will or action by the Queensland Government to repeal the *Wild Rivers Act (Qld) 2005*, Coalition members of the committee view the passing of the *Wild Rivers (Environmental Management) Bill 2010* as a necessary step to restore the rights of Indigenous people to explore and create for themselves, and in partnership, community-sustaining industries which are subject to proven and consistent environmental planning provisions.

It is important to note, the *Wild Rivers (Environmental Management) Bill 2010* is not designed to necessarily prevent Indigenous communities from pursuing investment opportunities under the existing *Queensland Wild Rivers Act (Qld) 2005* regime should they so wish.

Recommendation 2

For the reasons outlined above, Coalition members of this committee recommend the House of Representatives pass the *Wild Rivers (Environmental Management) Bill 2010*.

Mr Steven Ciobo MP, Deputy Chair

Mr Scott Buchholz MP

Ms Kelly O'Dwyer MP