

## **MINORITY REPORT**

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## AUSTRALIAN TOURISM: GOVERNMENT AND THE ENVIRONMENT

### *Introduction*

1. The Senate Standing Committee on Environment, Recreation and the Arts received a reference from the Senate in May 1988 concerning the Australian Tourist Industry. Essentially the terms of reference concern the role of the Commonwealth Government in the further development of the Australian tourist industry with particular reference to the environmental impact of tourist development.

2. For the inquiry to have progressed properly, this element of the terms of reference ought not to have taken for granted that there would be a dominant role for the Commonwealth either in the industry's future development, or with regard to the environment. Rather, questions needed to be raised concerning what the proper role of the Commonwealth should be and the ways in which such a role would be exercised.

3. The Commonwealth Government has a responsibility to promote prosperity in Australia's national economic activities by providing broad parameters in which economic activity can take place, ensuring minimal regulation of economic activity by government or its agencies. In this context the Commonwealth Government needs to ensure that our most successful foreign exchange earner, tourism, is able to flourish for the national economic good. While the Commonwealth could be considered to be a participant in the tourism industry through its ownership of government business enterprises such as Australian Airlines, the tourism industry like any other commercial venture will operate best in the ownership and management of private enterprise. The Government's major

responsibility is to ensure that such a potentially beneficial industry in fact delivers those economic benefits.

4. The further development of the Australian Tourist Industry, the central subject of the Senate's reference to this Committee, is best pursued by allowing all elements of the industry to develop their product with minimal intervention on the part of the Commonwealth. Australia's present economic plight obliges national decisionmakers to ensure that the most successful method of wealth generation - free enterprise - is utilised to this end. Successful Commonwealth decisionmaking concerning tourism would address the nature of the industry, the prospects for its growth and the measures that need to be adopted to ensure the maximum national benefit.

### *The Tourist Industry and Commonwealth Constraints*

#### *Economic Obstacles*

5. Tourism is a long-term economic operation. With regard to the criterion of return on capital invested, tourism is an industry for patient investors. Accordingly, investors in tourism, both large and small, have a sustained interest in the maintenance of economic conditions conducive to the growth of their industry. This includes a wide range of factors, from macroeconomic settings to the maintenance of appropriate infrastructure and the availability of appropriate labour on favourable terms.

6. One important aspect of the establishment of a favourable setting for the tourism industry in Australia concerns the obstacles to growth that the industry has inherited. The following are of particular relevance to tourism:

- A restricted and highly regulated labour market that has not allowed for independently negotiated employment contracts and maintains an expensive and archaic system of penalty rates.

- A national aviation policy that, in seeking to secure the future of our indigenous airlines (including Qantas), has restricted the choice of travel options for potential tourists. This has ensured that the costs of travelling within Australia have remained high in a country where, as a consequence of the distances to be travelled, it is necessary to reduce travel costs to a minimum to encourage tourists to visit as many State and Territory destinations as possible.
- The monopoly of government ownership on airport facilities, primarily the Federal Airports Corporation, has generally restricted competition in the travel industry and adversely affected Australia's ability to compete in the very competitive international tourism market.
- Restricted entry options for international tourists visiting Australia constrain the full development of potential tourist operations in areas distant from the international gateways.
- Bureaucratic delays add to the costs of tourist developments. Further, bureaucratic intervention can hinder the participation of potential investors including those with much-needed foreign capital.

7. The continuing existence of these disincentives to growth in investment in the tourism industry confirms that to date the Commonwealth Government has not done all that it could to foster the industry and reap the economic rewards. These disincentives represent major obstacles to the development of a more robust and effective tourism industry in Australia.

### *Environmental Concerns*

8. In addition to the economic obstacles there are widely accepted beliefs and concerns about developing environmental features that are unhelpful to the tourism industry. These beliefs include the misconception that economic development and environmental conservation are inconsistent, that they represent the essence of a policy dilemma with regard to tourism developments. With regard

to the environment and tourism there is a view that development is not conducive to maintaining environmental value.

9. The Committee's terms of reference, as noted, require consideration of the environmental impact of tourism in the context of the Commonwealth's role in the future development of the industry. The Commonwealth already has an extensive influence on the industry in this respect. There are two important heresies that need to be highlighted; they are:

- The invalid impression that governments, rather than other elements of Australian society, have a unique expertise or wisdom concerning the protection of the Australian environment.
- The misconception that Governments and their agencies have a better record in environmental protection than many other sections of the community.

It is important that these heresies not be allowed to influence the Commonwealth role in environmental and development matters concerning the tourism industry. Further, the following positive points need to be borne in mind:

- The tourism industry has a direct interest in the preservation of the environment, Australia's natural attractions, on which Australian tourism is increasingly depending.
- The key objective for the Commonwealth Government and the tourism industry should be to allow for the proper influence of market forces on tourism including its approach to the preservation of the environment.
- Government controls directed at environmental protection need to be exercised through very broad guidelines that combine the best knowledge of the vulnerability of the environment and a clear understanding of the tourism industry's incentive to preserve the environment.
- The rapid increase in information and knowledge about the environment provides the basis for the utilisation of market forces in tourism developments that are environmentally sensitive.

10. Taking these considerations into account, there are several comments, reservations and dissents to record with regard to the Committee report. They concern national environment protection as a Commonwealth program, and the Committee report's recommendations.

### *National Environment Protection*

#### *The Commonwealth Environment Protection Agency*

11. It is noted in the Committee Report that the Minister for the Arts, Sport, the Environment and Territories, Mrs Kelly, announced the establishment of a Commonwealth Environment Protection Agency (CEPA) in July 1991. The CEPA would be charged with developing uniform national environmental standards. Mrs Kelly's announcement was not unanimously welcomed by the States. The Queensland Premier was reported<sup>1</sup> not to have accepted the idea and the Premier of New South Wales was reported<sup>2</sup> to have said that if the States were to fund the CEPA they would want a share in its control.

12. As the Committee report states, the CEPA now has been set up as a non-statutory agency of DASET. Despite the advice of Mrs Kelly in the position paper on the CEPA that she released in July 1991, the CEPA has not been established as a Statutory authority. The objectivity and autonomy of the CEPA, accordingly, has not been guaranteed. Nor has its accessibility to the States been assured.

#### *The National Environment Protection Authority*

13. On 25 February 1992 the Intergovernmental Agreement on the Environment (IGAE) was concluded by the Territories and States with the exception

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<sup>1</sup> *The Australian*, 20 February 1991

<sup>2</sup> *Ibid.*

of Tasmania (whose government was newly-elected). The 1990 Special Premiers' Conference had resolved to develop this Agreement to facilitate a cooperative national approach to the environment, a better definition of the roles of the respective governments, a reduction in disputes over environmental matters between the Commonwealth and the States/Territories, greater certainty in decisionmaking and better environment protection.

14. Under Schedule 4 of the IGAE, the Commonwealth and the States agreed to set up a Ministerial Council to be called the National Environment Protection Authority (NEPA). According to the IGAE, the NEPA may establish 'measures' which are defined as 'national environment protection standards, guidelines, goals and associated protocols'. These measures, according to Schedule 4 of the IGAE, may be established for:

- (i) ambient air quality;
- (ii) ambient marine, estuarine, and freshwater quality;
- (iii) noise related to protecting amenity where variations in measures would have an adverse effect on national markets for goods and services;
- (iv) general guidelines for the assessment of site contamination;
- (v) the environmental impacts associated with hazardous wastes;
- (vi) motor vehicle emissions; and
- (vii) the reuse and recycling of used materials.

Further, the IGAE provided that the NEPA 'shall monitor and report on [the] implementation and effectiveness' of the measures.

15. The NEPA, then, is not merely a consultative mechanism for the Commonwealth and the States/Territories. It is an authority for the setting and monitoring of standards; it will be chaired by the Commonwealth with decisions made by a two-thirds majority. In addition, Schedule 4 of the IGAE provides that the Commonwealth and the States will be responsible for the attainment and

maintenance of agreed national standards, and compliance with national guidelines. Notably, Schedule 4 of the IGAE specifies that standards are mandatory.

*A Caution to the States/Territories*

16. A mechanism has now been established for the setting of environmental standards nationally and for the monitoring of those standards. The setting up of the CEPA and the NEPA has been agreed. It needs to be emphasised, however, that because CEPA has not been established as a statutory authority there remains some uncertainty about the operation of these two bodies and the ways in which a Commonwealth Government could use them. Here the States and Territories need to be cautious about a particularly important matter: it is not clear that under present circumstances national environment standards will be set with objective advice about which the States can be confident. The States need to be satisfied about the independence of CEPA advice concerning standards for the environment.

17. The Inter Governmental Agreement on the Environment specifies (at 2.5.1.1) that:

Where there is a Commonwealth interest in an environmental matter which involves one or more States, that interest will be accommodated as follows:

- (i) the Commonwealth and the affected States will cooperatively set outcomes or standards and periodically review progress in meeting those standards or achieving those outcomes ...

Importantly, the position paper<sup>3</sup> released by the Minister, Mrs Kelly, in July 1991 nominated the following as the 'most practicable' option for the Commonwealth and the States to set standards:

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<sup>3</sup> *Proposed Commonwealth Environment Protection Agency*, p. 19

- (b) establishment of a Commonwealth-State-Territory Ministerial body with a standard-setting role supported by complementary legislation or a referral of powers by the States to the Commonwealth for the purpose of creating standards - the precise role would depend upon the terms of any such referral; secretariat support for this body to be provided by the Commonwealth EPA.

However, the following was also considered an option:

- (c) reliance on Commonwealth powers to implement national standards, based either on agreements achieved by one of the means suggested above or, where there is no agreement, on Commonwealth decisions based on the outcome of any collaborative processes and any other relevant factors such as international developments or obligations.

18. Notably, the 'most practicable' option provides for the Secretariat servicing the NEPA to be from the CEPA. And the CEPA has been established as a non-statutory agency of the Department of the Arts, Sport, the Environment and Territories. As matters stand, the support and advice services available to the NEPA would be resourced from officers directly answerable to the Commonwealth Minister, the same officers responsible for the development of the standards being proposed. Given the importance of the environment to the States, together with the fact that the States would want objective advice (independent of Commonwealth influence) concerning the setting of environmental standards, it is highly undesirable that the CEPA has not been established as a statutory authority. It would be advisable for the States to request the Commonwealth to prepare legislation for the establishment of the CEPA as a statutory authority as a matter of urgency. A central authority such as the CEPA needs to be able to advise on environmental problems that might be unique to one State or Territory. And the States should have direct access to the CEPA to draw confidentially on its expertise.

19. Of course, were the matters being considered by the NEPA to be of a 'motherhood' type, then the process of the development of those matters (including environmental standards) would not be a matter of concern. It is envisaged, however, that NEPA issues will not be resolved at the level of lowest common denominator: this is indicated by the fact that decisions will be taken on a two-thirds majority. The NEPA will take decisions about setting environmental standards (which, the IGEA states, are 'mandatory') and the CEPA is charged with developing standards; if the States are to be assured that the Commonwealth will not use the NEPA to legitimise its views on environmental issues, then the CEPA must be established as a statutory authority to which the States have direct access. Further, the NEPA Secretariat should not be provided by the CEPA.

20. In conclusion, the very need for a National Environment Protection Authority should be seriously questioned by the States and Territories, industry, small business and local government. To the extent that national standards are made uniform and the achievement of these standards is monitored by a National Environment Protection Authority, the development and innovation of public policy at a local level where policy can reflect local regional and State circumstances would need to be encouraged.

21. The National Environment Protection Authority could, regardless of its structure, become a dangerous centralising force which effectively destroys policy innovation and private sector initiative in environmental management. Its very establishment could actually work against its stated aims. We should be very wary of establishing a National Environment Protection Authority. To this end we recommend that the legislation establishing the National Environment Protection Authority be exposed for a six month period allowing for a thorough consideration of the legislation by industry and the broader community.

### *The Committee Report's Recommendations*

22. Given the need to enable the Australian tourist industry to flourish, and the difficulties in achieving that goal that could result from the establishment of the NEPA and CEPA, the following comments on the recommendations of the Committee's report are important.

#### *Recommendation Five*

23. The Committee has recommended that the Commonwealth Government retain responsibility for the international marketing of Australia as a tourist destination. However, this recommendation is questionable because efforts should be made to allow for the widest possible scope for marketing strategies and techniques. There will be limitations on any one body, be they financial or by way of management and marketing innovation. Consequently State and local governments as well as private individuals and companies should have far more scope to be involved in activities aimed at promoting Australian Tourism internationally. The Committee's recommendation is illconceived in that it limits the opportunities for the involvement of private enterprise in multifaceted marketing campaigns. It also ignores the need for the States and the Commonwealth to co-operate on tourist promotion. The Commonwealth should nurture an economic environment that encourages private sector promotion of tourism.

#### *Recommendation Nine*

24. The Committee has recommended that empirical studies of the likely effects of developments on environmentally sensitive sites be commissioned by developers at the concept stage of a development. This would require that developers absorb an increased expense in the drafting of a proposal; there is no provision in the recommendation for compensation for this responsibility.

25. In addition to the cost impost of this recommendation on the developer, the recommendation seems to presume that development for most sites is likely to be environmentally negative; the onus of proof seemingly is on the developer.

26. Further, before such a recommendation could be accepted, it would need to be demonstrated that the bureaucratic process entailed by such studies would not impede the progress, and possible economic viability, of development proposals.

#### *Recommendation Ten*

27. The Committee has recommended that projects likely to cause significant scarring only receive development approval conditional upon an undertaking to renovate the area. Because of the fact that it would be the developer and subsequent proprietors of the development who would benefit commercially from this recommendation, it seems appropriate. This should be a matter that is dealt with exclusively by local authorities and is a matter in which the Commonwealth has no role whatsoever. Further, it should be noted that this recommendation is consistent with the *Environmental Guidelines for Tourist Developments* developed by the Australian Tourist Industry Association.

#### *Recommendation Eleven*

28. The Committee's recommendation is that there be environmental impact statements which include an analysis of the social and cultural impacts of tourism development. However, it should be noted that any impact statement that reviews the social or cultural implications of a development necessarily would involve the application of value judgements and subjective assessments based on assumptions about the possible social and cultural effects of tourist development. It is, of course, difficult to specify the desirability of some effects without the employment of subjective judgement to a considerable extent. More specifically, Governments involved in assessing the social and cultural impact of developments

could do so on the basis of their own attitudes and priorities. This could be highly undesirable. Governments ought not to have an entrenched role in directing social and cultural change. Government does not have a role in setting social or cultural priorities or objectives, and certainly no role in applying its value judgements on the community at large.

#### *Recommendation Twelve*

29. The Committee report recommended that, before tourism developments are approved, provision be made for community consultation, including with the involvement of local government where appropriate. There is, however, a need for considerable caution concerning the establishment of a further bureaucratic step. In any case, local government should be conscious of community concern about major issues such as tourist developments and their effect on local environmental features.

#### *Recommendation Fourteen*

30. This recommendation is acceptable only in so far as it advocates *guidelines* (which are discretionary) and not *standards* (which are mandatory).

#### *Recommendation Sixteen*

31. At recommendation Sixteen the Committee has recommended that foreign investment proposals be required to demonstrate the likely economic benefits that they will provide; notably, this recommendation is inconsistent with other parts of the Committee's report. At paragraph 10.13 the Committee records that in July 1986 the Government liberalised its foreign investment policy guidelines. Essentially the Government:

- replaced the requirement that foreign interests proposing to acquire existing tourism businesses (such as hotels) should demonstrate net economic benefits to Australia;

- established the present policy that proposals are normally approved unless found to be contrary to the national interest; and
- abolished the requirement that there be at least 50 per cent Australian equity and joint Australian/foreign control in respect of all new tourism business involving a total investment of \$10 million or more.

The Committee concluded paragraph 10.13 with an endorsement of these 1986 reforms. And at recommendation Twenty the Committee recommended that 'the liberalised policy on foreign investment since July 1986 be maintained'. Inconsistently with this, at recommendation Sixteen the Committee recommends that the guidelines for foreign investment be tightened to include the pre-1986 requirement that net economic benefit be demonstrated! Recommendation Sixteen is inconsistent with recommendation Twenty and paragraph 10.13. If the FIRB is to continue, we endorse the liberalised 1986 guidelines fully.

#### *Recommendation Twenty-Seven*

32. The Committee has recommended that the Foreign Investment Review Board should request social impact statements as part of the process of reviewing foreign investment proposals. This is a most unconvincing recommendation. Social impact statements are not required before developments involving Australian investment are approved. The Committee was not presented with evidence that there was a greater adverse effect socially, or environmentally, from foreign investment in developments. Indeed, to the contrary, all evidence suggested that foreign investment in Australian tourism during the 1980s was vital in ensuring that our tourism infrastructure kept pace with rapidly increasing demand. Furthermore, this foreign investment has enabled many Australians to enter this industry boosting employment particularly in regional areas.

### *Recommendation Thirty*

33. At recommendation Thirty the Committee has recommended that implementation of the National Tourism Strategy be expedited to achieve the most beneficial outcome. And at Recommendation Eight the Committee advocates a review of the promotion and marketing carried out by the Australian Tourist Commission to identify a program to encourage international tourism to all States. It is important to emphasise that implementation of the National Strategy must occur at State level so as to include the strategies and priorities of the State and regional communities. Were it to overlook such local priorities, a national strategy may fail to achieve the national goal of maximising the benefit of the tourism industry.

### *Minority Report Recommendations*

34. Having considered where the Committee report's recommendations require amendments or deletion, the following recommendations need to be added to the Committee report:

#### *Recommendation One*

35. That to ensure its autonomy and the objectivity of advice, the Commonwealth Environment Protection Agency be established as a statutory authority as a matter of urgency. That the legislation establishing CEPA as a statutory authority:

- make provision for the States to consult the Agency directly as a right;
- provide the CEPA with an independent role to recommend environmental standards to the NEPA.

### *Recommendation Two*

36. That in recognising the distinct advantages of a decentralised decisionmaking process and in keeping with the federal nature of Australia's system of Government, the National Environmental Protection Agency be renamed the "Federal Environmental Protection Agency".

### *Recommendation Three*

37. To allow for greater public understanding and comment on the issue of the desirability of establishing a National Environmental Protection Agency, the NEPA legislation be exposed for comment by the general community and industry groups for no less than six months.

### *Recommendation Four*

38. That in an effort to meet its objectives for environmental preservation and maintenance, the Commonwealth Government should be discouraged from using the external affairs power to impose Commonwealth treaty obligations on the States.

### *Recommendation Five*

39. In the first instance, effective environmental management is carried out at the local level in active consultation with members of that community. Any setting of environmental standards and guidelines should reflect the demands of the local community and their ability to implement them with little or no disruption to their private or commercial interests.

### *Recommendation Six*

40. The role of the Australian Tourist Commission in promoting Australia as a destination for overseas visitors must be recognised. However, its position

should be strengthened by freeing it from bureaucratic restraints and giving it a greater private enterprise focus. At the same time the Commission should be encouraged to co-operate as closely as possible with State authorities and private enterprise in promoting Australia.

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