



*Government Response to the
Senate, Environment,
Communications, Information
Technology and the
Arts References Committee*

Hinchinbrook Channel Inquiry

**GOVERNMENT RESPONSE TO THE SENATE ENVIRONMENT,
COMMUNICATIONS, INFORMATION TECHNOLOGY AND
THE ARTS REFERENCES COMMITTEE**

‘The Hinchinbrook Channel Inquiry’

The Government supports the findings and recommendations of the minority report by Senators Tierney and Lightfoot.

The majority report makes a series of findings which are unsubstantiated, and which are not supported by any objective analysis of the available evidence.

It is impossible to avoid the conclusion that the report of the majority is politically inspired. As such, the majority report fails to provide any meaningful contribution to the challenge of ensuring the conservation and ecologically sustainable use of the Hinchinbrook Channel.

The majority report suggests that the process under which the Federal Minister for the Environment gave consents relating to the Port Hinchinbrook development was flawed.

This is demonstrably not correct.

The Federal Court and the High Court have both examined the Minister’s decision-making process relating to the granting of consents. In each case, the court has concluded that the Minister’s decision-making process was sound.

In particular, the decision of the Federal Court provides clear evidence that the Minister for the Environment followed due process in assessing applications relating to Port Hinchinbrook. The Court found that this process involved careful and detailed consideration of environmental issues and a high regard for the protection of world heritage values.

The majority report merely repeats many of the unsubstantiated claims which the Federal Court and the High Court have already rejected. It is clear to any reasonable person that there was never any basis for these claims. In this respect, it should be noted that one judge in the Federal Court described claims of this kind as ‘insupportable’.

Some of the findings of the Federal Court include the following:

- The Federal Court recognised that the Minister concluded, having regard to the protective arrangements in the Deed and the regional planning process, that the risk of damage to world heritage values was ‘so low as in all the circumstances to be insignificant’.
- The Court acknowledged that there was a ‘great deal of scientific material available to the Minister assessing the risks of the activities

requiring Ministerial consent’ (Sackville J). That is, the Minister made an informed decision on the basis of relevant scientific advice.

- The Court also noted that the Minister ‘took into account the commonsense principle that caution should be exercised where scientific opinion is divided or scientific opinion is in-complete’ (Sackville J). That is, the Minister applied the precautionary principle. In fact, the Court specifically found that ‘it is equally clear that before making a final decision, he (the Minister) took steps to put in place arrangements designed to address the matters of concern identified in the scientific reports.....’ (Sackville J).
- One judgement noted specifically that the steps taken by the Minister in the negotiation and execution of the Deed and the initiation of the regional planning process ‘evinces a concern to secure compliance with the Convention’ (Burchett J).
- The Court found that the Deed ‘imposed extensive and detailed obligations’ on the developer (Sackville J). Another judgement described the Deed and the regional planning process as constituting ‘elaborate arrangements’ (Burchett J).
- The Court also confirmed that it is appropriate for Australia to rely upon a combination of Commonwealth or State laws or administrative arrangements, or a combination of both, to discharge its obligations under the Convention.
- In summary, the Federal Court and the High Court have confirmed that the Minister’s decision-making process was rigorous and proper, consistent with the precautionary principle and firmly based on relevant scientific advice.

The majority report also attempts to argue that there has been inadequate assessment of environmental issues relevant to Port Hinchinbrook.

This ignores the clear evidence to the contrary. Over 25 scientific or technical reports on environmental issues relevant to Port Hinchinbrook had been prepared before any Federal decision to grant consents was made.

In this context, it is worth noting that the current developer acquired the Port Hinchinbrook site in a degraded state in 1993. In this degraded condition the Port Hinchinbrook site had the potential to seriously threaten important environmental values of the Hinchinbrook Channel. Sediments, nutrients and acid run off resulting from the extensive earthworks on the site in 1988/89 could have had long term impacts on the adjacent seagrass in Hinchinbrook Channel. These issues have now been addressed in the subsequent development and restoration of the site.

The Environmental Management Regime

An intensive, best practice post-approval environmental management regime has been developed and implemented at Port Hinchinbrook. It represents perhaps the most rigorous environmental management regime applying to any project on the Queensland coast.

As a result of the implementation of the environmental protection regime applying at Port Hinchinbrook, the project has not had any adverse impact on world heritage values in the Hinchinbrook Channel.

In particular, the Government notes that there is no credible evidence to suggest the Port Hinchinbrook development has caused any damage to world heritage values.

Future Developments

The EPBC Act, which entered into force in July 2000, provides increased protection for Australia's world heritage properties. For example, the EPBC Act provides:

- that all actions likely to have a significant impact on a world heritage property will be subject to a rigorous and transparent environmental impact assessment; and
- that, in appropriate cases, the Commonwealth government can impose statutory conditions on relevant projects rather than relying upon contractual arrangements with proponents.

RECOMMENDATIONS

Recommendation 1 (paragraph 3.31)

The Committee recommends that the Commonwealth, as a party to the Port Hinchinbrook Deed of Agreement, should engage an independent assessor to report on whether the developer has been and is complying with the Deed. The Committee recommends further that if the developer is found to be in breach of any part of the Deed, the Commonwealth should act to ensure the developer complies with it and take steps to remedy any breach.

Response

The Government considers that if implemented, this recommendation would effectively duplicate arrangements already in place. Professor Peter Saenger was appointed the independent monitor under the Deed of Agreement in 1996 by the four parties to the Deed. It has been his role to ensure that works on the site are conducted in such a way that the environment is protected, that the various agreed plans are implemented eg: Turbidity Control Plan, Ongoing Monitoring Plan, Acid Sulfate Soil Management Plan etc, —and that works are of an acceptable environmental standard. There is no practical benefit to be gained from another person providing advice on implementation of the Deed of Agreement.

Implicit in the recommendation is the suggestion that action has not been taken when necessary to ensure compliance with the Deed. This assertion is wrong —steps have always been taken to immediately rectify any site management issues dealt with by the Deed. As a result, there has been no significant impact on World Heritage values.

Recommendation 2 (paragraph 3.33)

The Committee recommends that in future, Deeds of Agreement should not be used as a means of avoiding compliance with an existing regulatory regime.

Response

The WHPC Act, which applied to Port Hinchinbrook, did not allow conditions to be imposed on a consent granted under that Act. Accordingly, the Deed of Agreement was relied upon as a means of imposing environmental requirements on the developer and ensuring ongoing Commonwealth involvement in environmental aspects of the project.

As indicated above, the Federal Court found that the Deed ‘imposed extensive and detailed obligations’ on the developer.

The suggestion in the majority report that the Deed of Agreement was used to avoid compliance with an existing regime is wrong. The majority report in this respect reflects an unfortunate lack of understanding of the relevant legal position.

Recommendation 3 (paragraph 3.87)

The Committee recommends that local councils, and State or Commonwealth governments when involved, commit to thorough, independent environmental impact assessments for significant developments. Terms of reference should be developed in consultation with the relevant stakeholders, and environmental impact assessments should be made available for public scrutiny and comment.

Response

The EPBC Act, which entered into force in July 2000, ensures a rigorous and transparent assessment regime for all activities with the potential to significantly impact on the World Heritage values of the Great Barrier Reef World Heritage area. This includes public scrutiny of assessment documentation.

Recommendation 4 (paragraph 3.87)

The Committee recommends that in cases where the Commonwealth government is involved, it should ensure that an early, consultative environmental impact assessment is conducted before any significant development is allowed to proceed.

Response

This is existing practice and has been further strengthened by the implementation of the EPBC Act in July 2000.

Recommendation 5 (paragraph 4.62)

The Committee recommends that a full assessment of acid sulfate soils at the Port Hinchinbrook development should be undertaken and a comprehensive acid sulfate abatement plan should be developed.

The Committee recommends further that if the developer is found to be in breach of the Acid Sulfate Management Plan the Commonwealth, as a party to

the Deed of Agreement, should act to ensure that the developer complies with the first part of this recommendation and remedies the effects of any breaches.

Response

The majority Committee report has chosen to ignore the conclusions of the latest surveys undertaken at the site by consultants to the Queensland government AGC Woodward-Clyde. This work constitutes the most comprehensive assessment of acid sulfate soils at the Port Hinchinbrook site to date and builds on earlier work undertaken by the Queensland Acid Sulfate Soil Investigation Team (QASSIT). The consultants have mapped the distribution of acid sulfate soils around the site, identified some areas where action was required and suggested appropriate remedial strategies. A work plan to address the areas where the consultants identified problems has been developed by the Queensland Environment Protection Agency and agreed and implemented by the developer. Compliance is being monitored by Professor Saenger.

Recommendation 6 (paragraph 4.62)

The Committee recommends that the Commonwealth should allocate special funds to the CSIRO to conduct both general research on acid sulfate soils and a special project that would expedite acid sulfate soil mapping around Australia.

Response

The Government agrees that management of drainage from acid sulfate soils is a significant problem for Australia. Mapping the extent of acid sulfate soils is recognised as an important part of the overall management response to this problem. Funding for acid sulfate soil research, including mapping, needs to be carefully allocated to ensure it is directed strategically and that proposed research activities are coordinated with existing Commonwealth and State programs. The Commonwealth Government's response to the problem of acid sulfate soils includes, but has been much broader than supporting surveying and research—a 'National Strategy for the Management of Coastal Acid Sulfate Soils' has been developed. The National Strategy defines the roles and responsibilities of the various stakeholders, including all levels of government. The Commonwealth's role includes national coordination and funding assistance for research and on ground demonstration projects. In this regard, the Government has provided funding for acid sulfate soil projects through a number of its existing programs including, Coastcare, the National Landcare Program and the Clean Seas Program.

The National Landcare Program has specifically provided funds for mapping activity and most of the NSW coast has already been mapped along with South Eastern Queensland.

Recommendation 7 (paragraph 4.81)

The Committee recommends that, notwithstanding the difficulties, the Commonwealth and Queensland governments should expedite action to control threats to dugongs in the southern Great Barrier Reef region, including the reviewing of the use of gill nets in areas frequented by dugongs.

Response

The Commonwealth Government in collaboration with Queensland is committed to comprehensive urgent action for dugong conservation on the Great Barrier Reef, especially south of Cooktown. As noted by the Senate Committee, this commitment was reviewed on 30 July 1999 when the Great Barrier Reef Ministerial Council enhanced action already taken by implementing supplementary protection measures for dugong such as:

- Further restrictions on the use of commercial fishing nets in Dugong Protection Areas (such as that in the Hinchinbrook Region) including on the size and types of nets used and the way they are fixed;
- A new strategy to form co-operative agreements with indigenous communities including for management of dugong;
- Implementation of a vessel speed limit in Hinchinbrook Channel;
- Upgraded procedures for responding to reports of stranded dugong including refining processes to establish 'cause of death' and early release of information to the public.

The Ministerial Council will keep under ongoing review the effectiveness of measures for dugong recovery and conservation.

Recommendation 8 (paragraph 5.33)

The Committee recommends that the Commonwealth and the Queensland governments should research the environmental effects of aquaculture on the Great Barrier Reef World Heritage Area.

The Committee recommends further that pending improved knowledge of the environmental effects of aquaculture on the Great Barrier Reef World Heritage Area, discharge of effluent to the World Heritage Area should not be permitted and no new aquaculture permits in the area should be issued.

Response

In February 2000, the Commonwealth Government introduced regulations under the Great Barrier Reef Marine Park Act 1975 which will operate as a safety net for the Great Barrier Reef Marine Park by ensuring the proper regulation of discharges of waste from aquaculture operations adjacent to the Marine Park.

Recommendation 9 (paragraph 5.75)

The Committee recommends that in order to achieve more independent environmental assessments of proposed developments, planning authorities rather than the developer should be responsible for selecting consultants by lot from a short list of tenderers.

Response

All jurisdictions in Australia require the proponent to prepare documentation for environmental impact assessments. An appropriate level of independence is assured through the legislative processes, which provide for public review, independent assessment by Government agencies, and provision for Ministerial recommendations, approval or consent of proposals.

Recommendation 10 (paragraph 5.151)

The Committee recommends that the Commonwealth should work with the Queensland Government and local Councils whose decisions may affect the World Heritage values of the Great Barrier Reef, to expedite making regional plans that explicitly take into account world heritage conservation as a key material consideration in land-use planning and development control decisions.

Response

GBRMPA has been actively working with State and Local government and the community on appropriate planning regimes for the Great Barrier Reef region for some time. The development of a 25 Year Strategic plan in 1994, identified a shared vision for the Great Barrier Reef and incorporated the views of over 60 stakeholder groups, including local shire councils adjacent to the Reef. The Government is taking steps to promote the development and implementation of the Cardwell Hinchinbrook Regional Coastal Management Plan.

Recommendation 11 (paragraph 5.151)

The Commonwealth should fund a program of regional planning in local government areas where planning decisions may affect World Heritage values of World Heritage areas. Funding should be conditional on using best practice planning processes.

The Commonwealth should also fund a program of information and education about World Heritage conservation in those local government areas.

Response

The Government supports in principle regional planning undertaken with local governments and communities where World Heritage values may be affected, such as that being undertaken for the Cardwell Hinchinbrook Regional Coastal Management Plan. The Commonwealth Government has contributed financially to the development of this Plan.

The EPBC Act ensures that the Commonwealth Government can adopt a strategic approach to its involvement in planning for land use that may affect world heritage values, and also ensure assessment of actions likely to have a significant effect on world heritage values of World Heritage properties, and protection of those values.

Recommendation 12 (paragraph 5.152)

The Committee recommends that the Commonwealth, in company-operation with the State, should expedite studies to identify Australia's World Heritage properties or potential World Heritage properties and to update as necessary their statements of World Heritage significance.

Response

The Government supports in principle the recommendation, which is consistent with current policy. Sites are proposed for World Heritage listing only after detailed study and after the fullest consultation with the relevant State or Territory government. The Government has set in train a program to

progressively update the statements of significance of Australian World Heritage properties. This program includes a comprehensive review, published in 1997, of the World Heritage values of the Great Barrier Reef (The Outstanding Universal Value of the Great Barrier Reef World Heritage Area).

Recommendation 13 (paragraph 5.152)

The Committee recommends that the Commonwealth, in company-operation with the States, should expedite research into risks to the World Heritage values of Australia's World Heritage properties.

Response

The Commonwealth recognises the importance of protecting World Heritage values and undertaking research into the management of World Heritage. As part of the implementation of the EPBC Act consistent standards will be applied to management planning and impact assessment processes. In particular, the EPBC Act will ensure that all actions which are likely to have a significant impact on the World Heritage values of declared World Heritage properties will be subject to a rigorous and transparent impact assessment to ensure risks to World Heritage values are effectively managed.