

Queensland Productivity Commission

Inquiry into Service Delivery in Queensland's remote and discrete Indigenous Communities

Further CYI submission in response to the
draft report

15 November 2017

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Cape York Institute endorses the draft recommendations

Cape York Institute (CYI) welcomes the draft report of the Queensland Productivity Commission (QPC), which provides a blueprint for the structural, service delivery, and economic reforms needed to empower First Nations people, and to accelerate social, economic and cultural development in Cape York. This report represents the most extensive and incisive review of the systemic dysfunctions at the heart of the service delivery model and the relationship between government and remote communities in Cape York and in other communities in Queensland. It is the most important policy document produced in the state of Queensland since the *Protection Act* was legislated in 1897. The quality of the insights and rigor of the Commission's work is head and shoulders above past work seen in the history of Queensland. CYI congratulates the Queensland Government and the QPC for conducting this important inquiry, and ensuring its high standard.

There is agreement across governments and First Nations people about our desired destination—we must Close the Gap. No other settler country in the world has so great a gap as Australia between the social and economic circumstances of its non-Indigenous peoples and its original inhabitants. Since 2007, all Australian governments have been committed to Closing the Gap, but in many areas outcomes continue to worsen. Australia's First Nations continue to face escalating crises in child safety, incarceration and suicide. These statistical indicators of Indigenous disadvantage and human misery show no sign of abatement despite decades of effort and substantial expenditure. It is in Australia's remote Indigenous communities and areas, including in Cape York, that the gap is the greatest. While we all agree on the goal of Closing the Gap—the right policy framework must underpin this goal, and set out how we can get there.

Indigenous people speak with one voice when we say that the current system is broken. Major reform is needed. There is an urgent need for a policy of empowerment to promote better development outcomes by ensuring that Indigenous people have a far greater say in the policies, programs and funding that impact on their people, places and futures. First Nations people want to control their own future. The recommendations of the QPC report provide the correct policy framework through which to Close the Gap.

The Australian Government is already moving down the path recommended by the QPC in Cape York. This includes through Empowered Communities, but also through recently partnering with Cape York Partnership to kick-start the Empowerment, Land and Economic Development planning that needs to occur at the local level across the Cape. This means that should the Queensland Government accept the recommendations of the final QPC report, Cape York will have already made a substantial 'head start' in that Indigenous people across all 12 sub-regions of Cape York have commenced the formulation of Empowerment plans and Economic Development plans for implementation.

The support of the Queensland Government for progressive structural, service delivery and economic development reform is crucial given the statutory powers and control it holds. The Queensland Government must move from top down, centralised control and operation of Indigenous communities to an empowerment and development approach, that ensures Indigenous people themselves can drive gains at a place-based level.

After having the opportunity to review the QPC's recommendations in its draft report, there are two key points that CYI would like to emphasise in this further submission. Firstly, there can be no underestimating the importance of implementation. If the finalised recommendations of the QPC are supported by the Queensland Government, implementation will be a major challenge. Secondly, there has been too little effort and investment from the Queensland Government in supporting Indigenous people to ensure that the right structures and processes are in place, including a coherent system of good governance, capable of enabling development and the long term viability of First Nations and discrete Indigenous communities in Queensland.

The implementation challenge is a very serious one

Even if the sound policy prescriptions recommended by the QPC are adopted fully by the Queensland Government, effective implementation will be a formidable challenge. Indigenous affairs has historically been characterised by a lot of public investment and effort in the front end on the design of policy reforms, albeit these have been often preoccupied with bureaucratic reform of service delivery. In contrast, there has rarely been an adequate focus on implementation, or ensuring that we have an intelligent system in place for the long term that learns from past mistakes and successes. There are many good Indigenous reform ideas that have been poorly implemented, and many recommendations of previous reports that despite being accepted by government at the policy level, have had little practical effect and remain largely unrealised on the ground. If the QPC's final recommendations are adopted by the Queensland Government, the focus on implementation must be relentless and determined to ensure success. Steps must be taken to ensure implementation is well managed and sustained over time.

While the changes will take time to be put in place, and capacity must be built on all sides along the way, First Nations themselves must be empowered to drive their own economic development and empowerment agendas. To support the reform agenda recommended by QPC changes must begin with the Indigenous planning processes needed to affect change. There must be an immediate and substantial departure from the business as usual consultation or engagement processes that government would normally use to go about such a planning process. Government led and managed planning processes are not empowering, and will not be effective in leading to the changes that are required as vested interests and mindsets will always tend to revert to and support the status quo. From the outset First Nations people themselves must be empowered to really lead and own such planning processes, and government must shift into a truly enabling and supporting role.

CYI suggests that to drive the changes needed on the government side, Treasury or the Department of the Premier and Cabinet establish a delivery unit to lead the Queensland Government response and its implementation. A long term strategic development and empowerment objective must drive all public policy actions. Within the Queensland Government, a strong central agency, with leadership of those with clear economic thinking, must be primarily responsible for the implementation. DATSIP has naturally vested interests and is focused on the delivery of centralised programmatic responses. It does not have enough economic, policy or implementation clout and capacity across government to effectively lead the Queensland Government response.

Deliverology is an approach pioneered by Sir Michael Barber under Prime Minister Tony Blair's government in the United Kingdom (UK) that demonstrated good results in effectively driving complex reform agendas. The model has been further developed by Barber with McKinsey & Company. It places a heavy emphasis on the use of data and targets to drive planning and implementation, and the flexibility to change and adapt in response to the information available. Under this approach, a small performance-focused team is established that gathers performance data and establishes routines to drive delivery performance. Data are used to set measurable and time-bound targets, and trajectories are established to create a tight link between planned interventions and expected outcomes. Targets are both ambitious and realistic. Historical comparison, and internal and external peer comparisons, are important benchmarking tools used to inform expected targets and trajectories.

The McKinsey model involves a 10-step delivery methodology which sets out in a comprehensive, logical way to achieve effective delivery. Not only has this methodology worked in the UK government context, it also has a proven track record in developing countries in areas such as increasing economic and employment growth, improving education outcomes and reducing crime. These are priority areas for all First Nations and have been clearly articulated by leaders from the 12 Cape York sub-regions at recent forums held in Cairns and Cape York. Although the approach would need some adaptation to ensure it is consistent with empowerment of Indigenous people, such a rigorous focus on implementation performance could certainly help drive the extensive changes that must be made within the Queensland Government.

Governance to support Economic Development, Land and Empowerment

Since the demise of ATSIC at the national and regional level, and the demise also of the Alternative Governance Structures program that was progressed for many years at the State Government level to consider better Indigenous governance models in Queensland, there has been very little focus on Indigenous governance arrangements. Current governance and organisational arrangements have arisen in an ad hoc manner, and there is a confusion of organisations and responsibilities involved at every level, as is noted in the QPC draft report.

Outcomes for Indigenous people living in remote and discrete Indigenous communities would greatly benefit from improved clarity about roles and responsibilities, and improved system of good governance. Indigenous people themselves must be supported to improve their own system of governance via an effective network of local and regional organisations—government cannot impose decisions in this respect on First Nations people and expect any success. Attention is warranted at every level, and here we provide some examples.

Who are the people and places we are seeking to develop?

In thinking about the question 'who are the people and places we are seeking to develop?', it should be remembered that is not just the people living in Aurukun, Coen, Hope Vale, Lockhart, or Mossman Gorge, that are concerned. There are a diaspora of people living in Cairns, Brisbane, Melbourne and other places that continue to have a critical and ongoing interest in the development of their home community and their ancestral lands. Some of these people may be 'orbiting' from

their home community or ancestral lands for positive reasons, such as to take up education and employment opportunities. Others may find themselves living a more marginal and difficult existence in regional centres, such as those from Cape communities that are living in and around the Cairns esplanade and parks. For these people the development of their home communities remains utterly relevant, as it is the failure to achieve social, economic and cultural development outcomes there that underscores their life in Cairns.

The QPC has correctly identified the importance of the principle of subsidiarity in the draft report. In Cape York, Indigenous people want to control their own futures, they want to plan and decide their own agendas for their peoples and places to accelerate the development of their own people and communities, and sub-regions, as they see fit. Universally, people want to empower the grassroots and enable local decision making.

The role of regional organisations

Cape York regional organisations have an important supporting and enabling role to play. Indigenous regional organisations in Cape York include Cape York Partnership, Cape York Institute, Apunipima, Balkanu and the Cape York Land Council. These regional organisations exist because of the history of Cape York people being determined to get politically organised to ensure they have leadership at a regional level that is needed for Indigenous people to take greater control, power and responsibility of their own lives and places. These organisations have arisen to assist the people of Cape York to pursue their political, social, economic aspirations. Regional leadership is a vital and necessary component of effective reform leadership. The regional organisations employ many Cape York people as staff, and involve Cape York people in their overarching governance including through their Board structures.

It is important to recognise that Cape York people associated with regional organisations remain members of Cape communities too, and they are traditional owners for land also. Local Cape York people prepared to work across the Cape with other like-minded reform leaders at the regional level, have been able to ensure that Cape voices are heard on issues that impact across the Cape.

The role of land related organisations

In addition to the Empowerment and Economic planning work currently being progressed by Cape York Partnership with the support of the Australian Government, traditional owners from across Cape York's 12 sub-regions are currently providing input and ideas for restructuring the Cape York Land Council to ensure that the Land Council can provide effective enabling support at the regional level so that traditional owners at the grassroots can more effectively use and manage their land. The Land Council has been focused over a number of decades on assisting people to have their land rights and native title legally recognised. Over this period corporate structures such as PBCs and Land Trusts that are required under law where Indigenous rights in land have been legally recognised have emerged, but generally these organisations are under-resourced and have limited capacity. In the Cape York Land Council area of responsibility, claims over the land area will be complete in coming years. Moving forward, the governance challenge for the Land Council and local level land holding organisations is to ensure that land rights and traditional rights are unified, and that entities are supported to hold, use and manage the land for the people they represent. As with the other Cape York regional organisations, the Land Council has an important supporting and enabling role to play.

Economic Development requires land reforms to ensure that First Nations can use and manage lands so that they may become viable, that is, with a high level of overall wellbeing and a lower level of outside support (see CYI 2005, [Can Cape York communities be economically viable?](#)). Traditional rights have to reconcile with the creation of land rights that balance the pursuit of opportunity by individuals and families with respect for traditional rights. For example, traditional owners of land must plan and agree where they will work to create Investment Ready Tenures to attract outside investment to support economic opportunities. The creation of such Investment Ready Tenures will mean that opportunities can be presented to investors with the consent of traditional owner's, and with cultural heritage and environmental approvals and clearances already in place, so that these do not impede the investment needed for opportunities to be realised. If the transaction costs are too high or uncertain then investment channels, both internal and external, cannot exist. Only traditional owners can devise and agree to such arrangements on their land, and they must be better supported to do so as they see fit through governance structures and processes.

The role of local government

Councils play an important role as local government in Indigenous communities. Many of Queensland's remote and discrete communities based on former reserves or missions have their own dedicated shire council to provide local government for their single small community. In Cape York there are eight Aboriginal communities that have their own shire council (e.g. Hope Vale Shire Council. In addition, the five small communities of the Northern Peninsula Area have been amalgamated into a single shire council based in Bamaga. (These shire councils are collectively referred to here, as 'Indigenous shire councils'). Other than in the Torres Strait and the Northern Peninsula Area, Indigenous shire councils were exempt from the local government reforms from 2007 that aimed to ensure the long term financial sustainability of Queensland local governments through amalgamating many small councils elsewhere in Queensland, despite the fact that in Indigenous communities the complete dependence on social housing means that councils do not raise rates through private land ownership as they do elsewhere.

Other Cape York Indigenous communities with similar histories do not have their own dedicated Indigenous shire council, but are part of other shire council areas where the shire council is based in a nearby mainstream/predominantly non-Indigenous town. Such is the case with Mossman Gorge, which is part of the Douglas Shire Council based in Mossman, and Coen which is part of the Cook Shire. Whereas local councils, including Indigenous shire councils, are supported with substantial resources from the state that fund the work of the elected members and operations of the council office itself, this is not the case for the key local elected leadership organisations for places such as Mossman Gorge and Coen where they do not have a dedicated Indigenous shire council but where local government functions of these small communities are performed by a broader, mainstream local council. Nonetheless in these Indigenous communities the local leadership organisations perform important and necessary functions to assist the people of these places to be self-determining. They must find other avenues of funding to support their operations, which at least in some respects mirror the roles and functions performed by Indigenous shire councils. In this situation, local leaders mostly provide their leadership to these organisations as volunteers.

These different arrangements have arisen largely as a peculiarity of history, and also as a result of governance and regulatory tools created and applied by the State of Queensland. Infamously, for example, the shire council in Aurukun came to exist after the Bjelke-Petersen's government seized

control of Aurukun's extensive bauxite reserves in 1975 and gave it to a French multinational, Pechiney. The Church supported legal and political campaigns by the Wik people against the state's actions. This is why Bjelke-Petersen and Hinze removed the Church and took over Aurukun and imposed the local government structure.

Critically, all of Indigenous shire councils act as both State appointed trustees of Indigenous land as well as being in charge of local government. The lines between land trusteeship and local government functions that should exist have become blurred over time and are now hard to distinguish or account for. These arrangements were initially designed to be short term in nature until transfer processes would commence under the *Aboriginal Land Act 1991* (ALA). Having land trusteeship responsibilities on top of the usual local government responsibilities has greatly complicated the relationship of Indigenous shire councils with other levels of government and the rights of their citizens and beneficiaries. Nowhere else does a local council hold the underlying tenure of a town. These governance arrangements are further complicated where native title continues to exist, and it is important to note that the *Native Title Act 1993* commenced post ALA. The interactions between the underlying land tenure held by council and native title are poorly understood and accounted for in land administration and governance systems, and this continues to have unintended and often damaging consequences for Indigenous identity and development prospects.

Most Indigenous shire councils continue to hold land in Indigenous communities on behalf of the community by way of 'a Deed of Grant in Trust' (or DOGIT). Aurukun is the only Indigenous shire council that has had its trusteeship of the town area confirmed as Aboriginal Freehold title under the 2014 transfer process (ALA 1991), although arguably this has entrenched the unintended consequences rather than alleviated them.

- One of the unintended consequences is that because of the communal land tenure and fragmented (or unsettled) governance structures underpinning the towns, the residents of these communities today remain locked out of private home ownership or at the mercy of a system that is at risk of creating a second 'Indigenous-specific' class of land and asset ownership that remains peripheral to the real economy. Almost all residents continue to live in government-funded social housing that treats people as recipients rather than tenants.
- Over recent years there has been a very substantial investment made in improving remote Indigenous housing through the National Partnership Agreement for Remote Indigenous Housing (NPARIH). However under NPARIH both the Queensland Government and local Indigenous shire councils are perversely incentivised to keep, maintain and increase the pool of social housing. They have been cast as 'rent seekers', absentee landlords and agents who would financially stand to lose should remote Indigenous communities move away from the current model of social housing. The financial incentives to maintain the status quo are considerable. For example, Indigenous shire councils, as trustees of the underlying DOGIT tenures on which the houses sit, are paid a lease fee per year each social housing lease to the state and an annual service fee as a rates equivalent, which Indigenous shire councils with no rates base are heavily reliant on. After several years of NPARIH such payments have become a critical component of funding and create a deep structural disincentive for the transfer and settlement of DOGIT tenures to land-holding organisations such as Land Trusts that are independent of councils.

Councils also have preferential procurement contracts for refurbishments and maintenance contracts for social housing. Despite these problematic consequences of NPARIH funding, it is important to note, however, that the investments in basic land administration (e.g. lot and plan survey and description) made through NPARIH have at least removed one potential barrier to the reforms required.

- Another unintended consequence is that all entrepreneurial activity in the town area must occur via the Indigenous shire council, which is not the case in other towns. Council as trustees are effectively placed as the gatekeeper of the creation of any other rights and interests in land in the town, such as the creation of a lease needed for a business. Through the fledgling top down planning schemes imposed through NPARIH the under-resourced councils have also added being the local development regulator to their powers and responsibilities. Councils in many communities see themselves as in charge, and they are in the box seat when business opportunities arise to negotiate themselves into partnership relationships. The result is that those business opportunities that do exist in Indigenous communities tend to be dominated by council acting in partnership with non-Indigenous entrepreneurs and businesses. Council control and (structurally embedded) overreach crowds out the private sector. Council should not be the driver or the gatekeeper for emerging economic activity but rather an effective regulator and enabler—a private sector needs to be able to develop independently but with the regulatory support of government like in any other town. For example, in Aurukun there has recently been increased business activity with the establishment of accommodation and restaurant which is largely a positive development for the town. However, the business is run by non-Indigenous people in a partnership arrangement with the Aurukun Shire Council. The local shop is also run through a similar arrangement, as is the art local centre. This is unlike the situation in any other town, and it can crowd out entrepreneurial opportunities for local small business, and lead to a concentration of power and opportunity in certain family groups. It also inevitably leads to allegations from those outside the 'elite' powerful circle of unfairness, favoritism and nepotism.
- Governance arrangements that must be navigated in order to take up an opportunity for economic development in Indigenous shire council areas are further complicated where native title continues to exist over the same land. This means that in addition to the underlying land tenure being held by the council as trustee, there is also commonly a PBC (RNTBC) established to hold native title rights that has a role over some or all of the same area. Where native title continues to exist, if a potential business activity requires a change in tenure that requires future act consent under the provisions of the NTA there is another layer of negotiation and agreement making that council and/or the proponents need to settle (e.g. if a private activity needs a lease that requires future act consent).
- For areas around town the picture may be equally or less complicated depending on whether DOGIT titles have been transferred and what the current governance structure is, and the level of capability and support to manage these interests. For example, in Aurukun, 286 hectares of town and reserve land is now held by the Aurukun Shire Council for the benefit of Aurukun residents as beneficiaries under the provisions of the ALA. Land surrounding the town area is held primarily by Ngan Aak-Kunch Aboriginal Corporation, an RNTBC, that holds both traditional rights and land rights over the vast majority of the former Aurukun Shire Lease as well as holding

traditional (native title) rights over large parts of the 286 hectares of land rights held by Aurukun Shire Council. This is not a recipe for effective decision making and planning over the land in town and surrounding area.

Although Indigenous shire councils have a unique history, it appears to have been the Queensland Government position for some time that they should perform the role as per other shire councils. The usual local government role of councils is often described as limited to 'roads, rates and rubbish', although broader planning responsibilities are also included. Despite the apparent policy position of the Queensland Government, and the small size and limited capacity of Indigenous shire councils, it remains the case that they are regularly called on to perform a very wide array of roles well beyond those ordinarily belonging to local government.

Often the councils are seen by government to provide easy and convenient access for government to 'the voice of community'—but this can lead to overreliance on the opinion and involvement of the councils alone in a great deal of decision-making, which can become highly problematic. For example council is often looked to in Indigenous communities to provide the 'voice of community' when any state government 'consultation' occurs about the allocation of money to services at the local level. In such cases Indigenous communities would be better served by broad, participatory planning processes—ones that allow everyone to have a say in setting the plan that influences how money comes into Indigenous places and is used to support priorities and local needs. In many other places around the world, such broad participatory processes have been used to inform the budgeting process so that resources are allocated to help development (e.g. such as under the village law across many thousands of villages in Indonesia). While council can and should perform its local government role in an inclusive way, having council play the role as the chief conduit to the voice of the community on all things, does not work. It serves to concentrate power and privilege in the hands of a small number of individuals and families.

Other small non-Indigenous towns in Australia should be used as an appropriate comparison point—government should ask itself if it is working to put the councils and the citizens on the same footing as other towns before they proceed to concentrate opportunity, including the opportunity to participate in decision-making, only with council in Indigenous communities. While each community has its own unique history, challenges and complexities, there is certainly a need for greater policy clarity with regard to the system of governance if we are to empower Indigenous people to accelerate the development of their own people and places.

Conclusion

It is very difficult to see how incremental policy improvements can do anything to improve the development prospects of Indigenous families living within a system beset by such fundamental structural flaws. Reform is needed that turns the current system from top-down and outside-in, to bottom-up and inside-out. Progress for families living in discrete Indigenous communities in Queensland will remain elusive as long as top-down approaches and structures continue to provide blind support for actions that guarantee passivity, dependence and decline.