



The next era of reform

Address to the Chamber of Minerals & Energy of WA - Annual General Meeting & Business Lunch - by Nyunggai Warren Mundine

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After a quarter century of reform in Australia by both Labor and the Coalition, the last federal government put the brakes on. Its signature economic initiatives - like the carbon tax, mining tax and workplace regulation - stifled growth and productivity. Its signature social reforms - like the National Disability Insurance Scheme and Gonski Education reforms – were put in place without a long term sustainable funding pathway to pay for them.

Any tax carries a cost to the economy. It was Adam Smith who observed that taxes are often “much more burdensome to the people than they are beneficial to the sovereign”. Paying and collecting taxes costs money, particularly when the tax is complex and has non-uniform application like the mining and carbon taxes. When a government imposes a tax it has to believe it’s worth paying for. And I don’t believe these were. Rather, they were intended to secure particular ideological objectives and support from key interests groups and constituencies.

The final report of the Henry Review on Australia's Future Tax System was issued 4 years ago. This was a sweeping 'root and branch' review of Australia's tax system at all levels of government. It laid out a detailed blueprint to redesign Australia's tax system with 138 Recommendations.

The Henry Review was commissioned by the Rudd government with wide terms of reference. It illustrates the principle that you should never commission a review unless you know the conclusions in advance. Even courageous reformers like Hawke, Keating, Howard and Costello would have struggled to deliver such wide ranging changes and bring the states, the various interests groups and the average person across the line in accepting them. So it’s unsurprising Rudd didn’t even attempt to.

Instead, Rudd proposed a mining tax loosely based on some of the Report’s Recommendations. The mining tax was a key cause of Rudd’s first downfall as Prime Minister and a revised version of the mining tax was legislated.

About NyunggaBlack

NyunggaBlack provides strategic business advice drawing on broad networks and expertise to help clients solve problems and grow their businesses in specific sectors. Our consulting services focus on Native Title, Employment and Mining and Energy and also on how clients can ensure their Reconciliation Action Plans deliver real outcomes as well as business growth.

NyunggaBlack also works in partnership with key clients to deliver managed service business opportunities for commercial and economic opportunities in Aboriginal communities and for Aboriginal & Torres Strait Islander people.

The mining tax has been an abject failure. For one thing it hasn't raised any money. In year 1 it raised close to zero in net terms. In the first half of year 2 it raised only \$234m, well short of the full year expectation of \$4 billion. The expected revenue was earmarked for a grab-bag of initiatives of questionable value in delivering growth and productivity and the government ended up having to borrow money to pay for them. And for all this affected companies took on yet another compliance burden.

The carbon tax was also poorly conceived. It's not about believing or not believing in climate change. Even taking climate change as a given and assuming a carbon tax does everything it's supposed to, the carbon tax penalises Australian business and consumers and will make no difference to the world's climate. Australia produces 1.5% of the world's carbon dioxide emissions. Reducing those by 5% by 2020 will have no discernible impact.

What we need in this country isn't more regulation, subsidies and taxes. We need conditions which enable investment, innovation and business to thrive in a highly competitive, global marketplace.

In a global economy, industry can readily move to places where the cost of doing business is lower. It's bizarre that some people who support carbon pricing have been so vocal in pointing the finger at this government when industries most impacted by it, such as manufacturing and aluminium refining, shut down.

The United States reduced energy-related CO₂ emissions by a whopping 12% between 2005 and 2012 to their lowest level since 1994. The USA did this without a carbon tax or emissions trading scheme. The reduction was primarily

driven by the market moving to natural gas. In 2005 natural gas delivered only 19% of the USA's power. By 2012 it delivered 30%. Innovation in drilling technologies unlocked large new supplies of this less expensive fuel.

America's carbon emissions plunged, not because of a tax, but because businesses wanted to make money and consumers wanted cheaper power. Companies invested in innovation, research and development to develop new technologies that made it economical to drill for natural gas in areas previously inaccessible and supply cheaper energy to meet consumer demand.

Profit incentives and consumer demand are much more powerful drivers of behavioural change than taxes and penalties and private investment is far more effective in driving innovation than government subsidies.

We've seen the impact of innovation and technology advances in the mining industry. We can now extract minerals and metallic ores that in the past couldn't have been mined affordably and we are using less energy to do it. New technologies have made excavation safer for people and less harmful to the environment. Mining has become more accurate and more efficient.

Innovation, research and development require capital investment. And people invest to make a profit. So it goes without saying that government policies that erode profits with compliance costs and extra taxes drive the investment dollar elsewhere.

What we need in this country isn't more regulation, subsidies and taxes. We need conditions which enable investment, innovation and business to thrive in a highly competitive, global marketplace.

Australia needs a new era of reform to put us on a sustainable economic footing, to bring about a more open marketplace, to meet the energy needs of our nation and to create

flexible workplaces that will cater for a very different kind of world and very different expectations of the working population. We need to reduce red tape and embrace deregulation. The challenges facing Australia can only be met with economic and commercial development facilitated by a reformed regulatory framework that embraces agility and entrepreneurship.

This doesn't mean sacrificing our way of life, destroying our environment or abandoning hard won social policies and infrastructure. These make us a better society to live and work in. But the greatest threat to our way of life, our environment and our social policies and infrastructure is an economy that can't support them.

Suggesting that a gas hub in James Price Point would ruin the Kimberleys is like suggesting that a development in Ulladulla would ruin all of Southern NSW and Victoria.

We can start with removing duplication. For example, we have environmental regulations at every layer of government and then some. How many regulations does it take to save a tree? All of these regulations create a huge cost for any project before it can get off the ground. They also create huge uncertainty – you can tick every box and still not get the approvals.

The cost of navigating through the compliance process for the James Price Point gas hub was around \$1 billion and represented around 25% of the construction costs. That project got to a point where it became uneconomic to proceed and Woodside withdrew to the great disappointment of the Western Australian government and the Aboriginal traditional owners who supported the project and were relying on it to spearhead economic development in their communities.

It's important that development in this country meet standards in things like environmental protection. But we must have certainty and predictability about the standards required and the approval process and its duration. And we should have one set of standards, not several overlapping standards from different governments and regulators.

The maze of approvals opens the door for special interest and protest groups to use the system to attack projects. After James Price Point was abandoned, some opponents boasted that they had driven the project to failure through protest and resistance at every stage of the project's pre-approval works.

The Wilderness Society claimed that a major industrial complex on the Kimberley coast would be environmentally destructive; compromise the sustainable economic future of the Kimberley (through things like ecotourism and eco-fishing) and be the 'thin edge of the wedge' to trigger many other damaging developments in the region.

These kinds of arguments are harmful and fanciful.

Sometimes I wonder if Greenies from the city actually comprehend the size of Australia's remote regions. I spend a lot of time flying over these areas. They are vast. The idea that you can't develop in these areas without destroying them is frankly ridiculous.

The Kimberleys is over 420,000 square kilometres. That's about twice the size of Victoria and three times the size of England. The land area for the gas hub project was 25 square kilometres and the marine zone 10 square kilometres. Suggesting that a gas hub in James Price Point would ruin the Kimberleys is like suggesting that a development in Ulladulla would ruin all of Southern NSW and Victoria.

There are some great opportunities for remote Indigenous communities to generate income through tourism. But these initiatives alone will

not generate the level of commercial and economic activity to support a sustainable economic future in remote areas. And if the James Price Point gas hub had gone ahead there would still have been four hundred and twenty one thousand, four hundred and twenty six square kilometres of land area in which to set up eco-tourism businesses.

We have seen this in North East Arnhem Land. Rio Tinto's bauxite mine and alumina refinery are located on the Gove peninsula on Yolngu land. The refinery – which is closing – sits on the very tip of the peninsula at Melville Bay, a picturesque part of the world with crystal blue water. Drive a short distance you'll find some of the most pristine and beautiful wilderness in Australia. The Yolngu nation has tourism initiatives in various stages of development. It also recently obtained mining licences in the area. Different industries can co-exist with each other and with the environment.

The Wilderness Society's claim that one development approval at James Price Point would open the floodgates for a raft of environmental destruction simply confirms to me that environmental activism today isn't so much about conservation but about stopping development.

I'm not aware of one new development project in mining, energy or infrastructure that has been supported by Green groups. Yet those groups enjoy the benefits of those industries and even depend on them to get their message across – they operate websites, fly in aeroplanes to their conferences and protest destinations, use their smartphones to spread their message of protest on social media. There would be no change.org petitions without mining, energy and infrastructure.

I'd like to issue a challenge to the Greens - name one place in Australia where you would support setting up a new mine and one place in Australia where you'd support oil or gas exploration and processing.

It's very easy to oppose. It's a lot harder to get out and build something that grows the economy, delivers jobs, creates economic prosperity and ensures that remote communities have a real sustainable future. Our country needs those initiatives; and Indigenous communities need those initiatives more than anyone.

Last week I attended Treasurer Joe Hockey's first pre-Budget address. The Treasurer outlined the substantial challenges to bring the Budget onto a sustainable footing and the case for economic reform. The Treasurer spoke about our need to be able to compete in the fastest growing region in the world; a region with some of the leanest, most aggressive and most flexible economies in the world; with countries that have much lower tax rates and don't have the welfare, social and education safety nets that Australia has.

I'd like to issue a challenge to the Greens - name one place in Australia where you would support setting up a new mine and one place in Australia where you'd support oil or gas exploration and processing.

Achieving this will take courage and dogged determination. Being a policy maker in today's world with a 24/7 news and social media cycle and constant opinion polling is a bit like performing while constantly being heckled. Whatever decision governments make – or haven't made but may possibly be about to make – some group will utter loud cries of objection and indignation. So it's not possible to deliver a reform agenda without feeling immensely unpopular and constantly under attack. This is something that I'm all too aware of.

Politicians today need even more political courage than Hawke/Keating and Howard/Costello governments to do what needs to be done. It's very easy for politicians to lose focus on the work they need to do and focus instead on how they are faring in the 24/7 cycle of feedback. I've written about how this happened during the last Labor governments in NSW and Queensland and the Rudd/Gillard governments.

What we need from our governments is leadership that will bring the community on the journey of reform and ignore the noise.

So I was encouraged to hear the Treasurer confirm that the Federal Coalition is committed to substantial and measured reform and understands the need for the government to take the community with it. Reflecting on the decision to take the GST to the election in 1998, he observed that politicians need to have courage in this business and that the most important currency in politics is honesty. He said *"If you are fair dinkum with the Australian people, they might not like it and they might not agree with it; but if they know what you're doing is right they'll back it."* No words could be truer.

Realising the reform agenda that Australia needs will take political courage, not just by the Australian Government but also by our state and territory governments.

It's also going to require sensible and practical cooperation.

The Henry Review and the James Price Point development both illustrate one of the limitations we face in Australia – our Federation. We are a small nation with three tiers of government. Up until World War 2, both the Commonwealth and the states collected income tax. Taxation was consolidated as a war-time measure and the reduction in the states' tax base was replaced by Commonwealth grants. States today have a limited base from which to collect revenue themselves.

However, the Constitution allocates most expenditure responsibilities to the states. So we have a situation where the states are responsible for key government services like health and education but the Federal government collects most of the revenue.

A foreigner might look at Australia and wonder why the Australian Government has a large Department of Education when it doesn't own or operate any schools; or why it has a large Department of Health when it doesn't own or operate any hospitals. It's because the Commonwealth controls the money, even though it doesn't deliver the service. In other areas – such as the environment – the Commonwealth has assumed responsibility through the external affairs power in the constitution.

In the next era of reform we must not leave Indigenous communities behind. In fact it's essential that we don't if we want to realise Australia's full potential.

The impact of all of this is that we have seen the Australian Government encroach into areas that were previously the domain of the states. Over time we've seen more and more duplication and overlap in regulation and bureaucracy.

I'm not one of those people who wants to get rid of the states. Apart from being completely unrealistic, it's a good thing that Australians have some level of choice as to what sort of regulatory system they live and do business within. Competition and variety between the states and territories provides this.

We need to accept the reality of Federation and the structure it presents us and work within that structure to deliver an efficient financial and regulatory system. This means accepting

that there are areas where the Commonwealth isn't the decision maker.

A future reform agenda should include reform of the Federation's financial arrangements, to achieve a structure that minimises duplication and dual regulatory systems and maximises efficiency. Of course the Australian Government needs to be able to hold states and territories to account for service delivery with federal money. However, it needs to do this without shadowing them. Make funding conditional on clear and measurable required outcomes and focus on whether those outcomes are achieved or not, not how the states and territories run their services to achieve them.

The Oxford Dictionary defines a "nation" as "a large body of people united by common descent, history, culture, or language, inhabiting a particular state or territory". That's exactly how Indigenous society was structured and how Indigenous people thought of themselves in 1788 and still today.

Finally, in the next era of reform we must not leave Indigenous communities behind. In fact it's essential that we don't if we want to realise Australia's full potential.

Indigenous people are the most over-regulated and over-governed people in Australia. At every level there are extra governance structures for Indigenous communities.

We know that over-regulation stifles innovation and entrepreneurship. When you add more for Indigenous communities it makes the very people who are most in need of

economic development the least able to engage in the real economy.

There are all kinds of statutory bodies with authority in Indigenous communities many of which have substantial "gatekeeper" power over traditional lands and cultural rights. Some are also responsible for carrying out normal municipal functions, running commercial operations and owning land and housing. There are also multiple systems of Indigenous land recognition and can be competing claims under different legal avenues.

Most of these statutory bodies aren't aligned to the traditional tribal nations. And I believe this is a problem.

The Oxford Dictionary defines a "nation" as "a large body of people united by common descent, history, culture, or language, inhabiting a particular state or territory". That's exactly how Indigenous society was structured and how Indigenous people thought of themselves in 1788 and still today.

Most Indigenous people today still identify by the nation or nations from which they descend. I'm from the Bundjalung nation in the Northern Rivers region of NSW and Southern Queensland and I was born on Bundjalung land.

To illustrate what I'm talking about, I counted around 11 Local Aboriginal Land Councils operating within the NSW part of Bundjalung lands, plus the NSW Aboriginal Land Council that operates across the state. Then there are Aboriginal Corporations that hold or are applying for Bundjalung native title rights and Native Title Services Corporations in NSW and Queensland which can represent groups in native title claims. There are also non-government groups like the Bundjalung Elders Corporation.

Having multiple bodies not aligned with nations and with overlapping responsibilities, scope and geographies creates confusion and

undermines economic development. People can go “forum shopping” or attempt to bypass the bodies altogether by putting ads in the paper calling for community members to attend meetings. Interest groups can find individuals who oppose a development and can claim they represent a particular group. Commercial negotiations become protracted or disintegrate with arguments as to who speaks for the nation.

It’s very difficult if a Land Council wants to support or oppose something contrary to the wishes of the traditional owners who don’t recognise the Land Council in their tribal governance structure.

Indigenous communities and cultures will not survive with a sustainable real economy to support them. For this, business needs to be able to engage with Indigenous communities effectively and with certainty.

I’ve seen disputes between traditional owners and statutory bodies. In Yilpara in the Northern Territory, the Madarrpa clan had a very public argument with the Northern Land Council who blocking the community’s pursuit of private home ownership on their own clan lands.

And just last week I read in the Koori Mail about the dispute over a proposed nuclear waste facility in the Northern Territory. Opponents of the project have been involved in legal proceedings against the Northern Land Council since 2010 claiming it hasn’t properly identified the traditional owners, hasn’t consulted enough nor obtained proper consent before recommending the project. Supporting them are Green groups who oppose the development.

We have no way of knowing if the individuals who are party to the legal proceedings represent the views of traditional owners because they don’t have a formal structure to represent them that accords with their nation structures. The Land Council is a government body set up to manage and administer lands across the top end of the Northern Territory. The Land Council lacks legitimacy within the traditional governance structures of the nations. Individuals opposing the project may be from the relevant nations but do not represent them in any formally recognised sense.

There will always be differing views within a nation of people. What you need is a clear governance structure that has legitimacy within the traditional communities and can make final decisions which provide certainty.

The Australian Government makes decisions every day that affect the nation that not every individual citizen agrees with. For example, the Foreign Investment Review Board decides whether certain foreign investment can occur. In the end, the Treasurer makes the decision and that decision is final, even though various individuals in Australia may disagree. Citizens have their say in elections and through consultation processes.

Now, imagine if the foreign company finds that there are other bodies or individuals who can challenge that decision or intervene in the decisioning process and all have some level of legitimacy. That is what is happening with traditional Indigenous lands today. The current system is letting down Indigenous communities and the organisations who want to do business with them.

I’ve proposed a reform agenda for Indigenous governance.

I believe there should be one governance body representing each Indigenous nation on matters uniquely relevant to that nation, such as the use of traditional lands, native title rights,

community assets, culture, heritage and language. Only members of a nation should be involved in its governance system using an objective and transparent test for identifying them based around descent.

We should not only special Indigenous bodies for matters that are unique to Indigenous lands or culture or where there is a special need, not for things like municipal services where the regular local government system can perform just as effectively, if not more so, than a special body.

There should be one governance body representing each Indigenous nation on matters uniquely relevant to that nation, such as the use of traditional lands, native title rights, community assets, culture, heritage and language. Only members of a nation should be involved in its governance system using an objective and transparent test for identifying them based around descent.

This system would provide clarity and certainty for people who want to invest or do business in an area. There would be one body to deal with on development and use of traditional lands and the protection of culture and heritage. The nation would have a process for consultation and decision making and ultimately decisions would be made with legitimacy, certainty and finality.

There's one more step we need to take.

The Mabo decision triggered a bit of a panic in the mining, energy and agricultural industries. During the negotiations of the Native Title Act, the Western Australian government in conjunction with mining and other industries

ran some pretty shameful scaremongering advertisements warning of Aboriginal people locking up the country from use by everyone else.

I doubt there are many in those industries who feel that way today. And to their credit, the mining and energy industries are now amongst the largest champions of Indigenous employment and are developing partnerships with traditional owners. I haven't met anyone in the mining industry who isn't committed to economic development and the elimination of poverty and disadvantage in Indigenous communities. And I know the mining and energy industries believe they have an important role to play in achieving this.

Today, native title claims involve a costly and lengthy legal process that typically take 4 to 10 years involving lawyers, historians and anthropologists to establish that a particular tribal group or nation has a continuous connection to the land and therefore that the group's native title rights are intact.

Having claims in the pipeline for long periods isn't good for Indigenous people and isn't good for business because, again, it does not deliver certainty.

It also has regressive consequences. The requirement of a continuous connection with the land discourages Indigenous people from moving away from their traditional lands to obtain work for fear this will prejudice their native title rights. If Indigenous people are going to fully participate in the real economy they need to feel free to move about the country – whether permanently or temporarily – without fear of losing their land. Like everyone else in Australia.

Indigenous tribes and language groups have been extensively studied and documented. By enlarge it's known which groups occupied which areas before 1788, the social systems they operated under, their languages, their stories and songs and their clan groupings. I have

proposed that governments dispense with requirements for a continuous connection to land, recognise the native title rights of the groups in the area we know they occupied before dispossession and fast-track settlement of the claims by agreements with each of the traditional nations. These agreements would also formally recognise the Indigenous nations and establish a single governing entity to represent each nation on manage matters concerning their traditional lands, assets, culture, language and heritage.

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Indigenous lands already make up 20% of Australia and 50% of the Northern Territory and Indigenous people have recognised cultural and other interests across Australia.

Indigenous communities and cultures will not survive with a sustainable real economy to support them. For this, business needs to be able to engage with Indigenous communities effectively and with certainty.

It is vital - both for Indigenous people and for the nation as a whole - that these lands and rights are managed in a way that makes it easier for people to do business and enables us to tap into the unlocked potential of our vast geography.

Like all other reforms, these will take courage – courage by our politicians, courage by Indigenous leaders and courage by industries such as mining and energy. However, like our Treasurer, I believe that if you are fair dinkum with people and if they know what you are doing is right they will back it.

Nyunggai Warren Mundine is the Managing Director of NyunggaBlack and the Executive Chairman of the Australian Indigenous Chamber of Commerce.

Highly respected and influential businessman, political strategist and advocate for empowering Australia's First People to build a sustained economy and to create business opportunities, Warren's life and career have been shaped by a personal commitment to the Australian and Australia's First Peoples' communities. More than 26 years' experience working in the public, private and community sectors. Nyunggai Warren Mundine is a member of the Bundjalung and Gumbaynggirr people from the North Coast of NSW and South East Queensland.