

**USING CHINA'S EXPERIENCE TO  
SPECULATE UPON THE FUTURE  
POSSIBILITY OF SPECIAL ECONOMIC  
ZONES (SEZS) WITHIN THE PLANNED  
DEVELOPMENT OF NORTHERN  
AUSTRALIA<sup>1</sup>**

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On 18 June 2015, the Australian Government released its White Paper *Our North, Our Future*, a 20 year plan outlining policies for unlocking the full potential of the north. This plan stated that Northern Australia would not be declared a Special Economic Zone (SEZ). Previously, in September 2014, a Parliamentary Joint Committee on Northern Australia report, *Pivot North: Inquiry into the Development of Northern Australia*, had recommended that a full investigation be conducted on the potential and practicality of SEZs in the north. This recommendation had been made on the basis that the Joint Committee considered that limited use of SEZs would provide a mechanism for promoting growth and development across Northern Australia. Our paper speculates on whether the notion of the limited use of SEZs can be discerned within the Australian Government's White Paper plan for developing the north by drawing upon the strengths and weaknesses of China's SEZ experience, particularly in terms of government commitment, foreign investment, population growth, employment and skill development, land reform, geographic location, environmental

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protection, and social services. Although there are many differences between Australia and China — for example, political institutions, economic development, and legal systems — reflecting on China's controlled experimentation with capitalism within designated geographic areas may assist in substantiating the notion of limited use of SEZs in Northern Australia.

## I INTRODUCTION

In September 2014, the Australian Parliament's<sup>2</sup> Joint Select Committee on Northern Australia<sup>3</sup> (the Committee) released its final report, *Pivot North: Inquiry into the Development of Northern Australia*.<sup>4</sup> This report suggested that the limited use of Special Economic Zones (SEZs)<sup>5</sup> should be considered in the Australian

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<sup>2</sup> Full title is the Parliament of the Commonwealth of Australia however more commonly referred to as the Australian Parliament, Commonwealth Parliament, the Federal Parliament or the Parliament. See *Commonwealth of Australia Constitution Act 1900* (Imp) s 1; Parliamentary Education Office, *Parliament* (Fact Sheet, undated) <<http://www.peo.gov.au/uploads/peo/docs/fact-sheets/parliament.pdf>>.

<sup>3</sup> 'Northern Australia', or simply 'the north', is the vast area of mainland Australia above the Tropic of Capricorn, the imaginary latitudinal line circling the Earth at approximately 23.5 degrees south of the Equator. Spanning two States (Western Australia and Queensland) and the Northern Territory, Northern Australia covers approximately three million square kilometres, over 40 percent of Australia's land mass, and includes tropical rainforests, wetlands, grassland savannah and desert. It contains up to 17 million hectares of arable soil and 90 percent of Australia's gas reserves. See Parliamentary Joint Select Committee on Northern Australia, Parliament of Australia, *Pivot North-Inquiry into the Development of Northern Australia: Final Report* (September 2014) 13 [2.2]-[2.3]. The north's definition has been expanded to include key centres, such as Alice Springs in the Northern Territory and Newman in Western Australia, which are below the Tropic of Capricorn. See Infrastructure Australia, Northern Audit Report, *Infrastructure for a Developing North* (January 2015) 43.

<sup>4</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3.

<sup>5</sup> 'Special Economic Zone' (SEZ) refers to an administrative area that has more liberal economic policies, regulations and practices compared to other parts of the country. Governments establish SEZs to stimulate economic development in those designated areas. A typical SEZ is physically located in a geographically defined space which, depending on its location, is under constant security surveillance. The SEZ is administered by a single

Government's forthcoming plan to develop the north. However, the Committee neither defined what it meant by the term 'limited use', nor fleshed out its parameters within the context of establishing SEZs in Northern Australia.<sup>6</sup> On 18 June 2015, the Australian Government released its White Paper,<sup>7</sup> *Our North, Our Future*,<sup>8</sup> a 20 year plan '[t]o unlock the north's full potential ...'.<sup>9</sup> While rejecting the notion of declaring Northern Australia an SEZ on constitutional grounds,<sup>10</sup> this plan did not specifically address the Committee's contemplation of the possibility of their limited use. The idea of the limited use of SEZs forms the genesis of our paper. We consider the strengths and weaknesses of China's SEZ experience as a basis for speculating upon how the Committee's notion of limited use of SEZs may be perceived within ideas expressed in the Australian Government's White Paper plan for developing the north, notwithstanding its rejection of SEZ per se.

While SEZs were not born from Chinese ingenuity<sup>11</sup> their use has accelerated China's economic transformation from what was predominantly an agrarian economy, toward initially more labour-intensive, light industrial production and, later, hi-tech, capital-

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management structure for business efficacy. Businesses operating within the SEZ are eligible for economic benefits, for example, concessions on rates and taxes. See Yu Keping, *Overseas Scholars on China Special Economic Zone [M]* (The Central Compilation and Translation Press, 2000) 1; World Bank Group, *Special Economic Zones: Performance, Lessons Learned, and Implications for Zone Development*, (FIAS (the multi-donor investment climate advisory services), 2008) 9.

<sup>6</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, 170.

<sup>7</sup> A parliamentary consultation paper outlining proposals, future policy or legislation. See *Oxford English Dictionary (OED Online)* <<http://www.oed.com/view/Entry/399483?redirectedFrom=White+Paper#eid>>.

<sup>8</sup> Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia* (2015).

<sup>9</sup> *Ibid* 5.

<sup>10</sup> *Ibid* 60.

<sup>11</sup> For an overview of SEZ models used internationally, see Australians for Northern Development & Economic Vision (ANDEV), Submission No 147 Attachment 9 to Parliamentary Joint Select Committee on Northern Australia, *Inquiry into the Development of Northern Australia*, 7 April 2014.

intensive sectors.<sup>12</sup> In drawing upon China's SEZ experience to speculate upon the Committee's notion of the limited use of SEZs, there are obvious caveats. China has a centralised government system which used SEZs as a medium for transitioning, in a very controlled way, from a planned, socialist economy to a developing open market economy.<sup>13</sup> Australia is a democracy, built on the doctrine of separation of powers, with a developed, free-market economy. China established its first SEZs in coastal areas with readily available supplies of abundant cheap labour in close proximity to potential sources of foreign investment from overseas Chinese diasporas, particularly those in Hong Kong and Taiwan. By comparison, Northern Australia has few significant population clusters and a heavily regulated labour market with higher wages and living costs. Despite these differences, China is used as a point of comparison in this paper because of its fruitful experimentation with SEZs. In the Australian context, the Committee noted that the creation of SEZs '... could be a way to diversify Northern Australia's economy by encouraging broader industry investment'.<sup>14</sup> A similar need for investment, particularly from abroad, had been one catalyst for China's SEZ experimentation.<sup>15</sup> China's pragmatism, tempered by gradualist approach to economic reform,<sup>16</sup> in introducing SEZs may be emulated if a future Australian Government decides to explore their limited use in the north.

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<sup>12</sup> Gard Kaarbø Asskildt, *China's Economic Re-emergence After 1978* (Master's Thesis, University of Oslo, 2014) 6 <<https://www.duo.uio.no/bitstream/handle/10852/40274/Masteroppgave-Gard-Kaarb-Asskildt.pdf?sequence=1>>.

<sup>13</sup> Hu Jintao, *The Speech on the Celebration Ceremony to Mark the 30th Anniversary of the Establishment of Shenzhen Special Economic Zone* (People's Press, 2010) 1.

<sup>14</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, 39 [2.117].

<sup>15</sup> Douglas Zhihua Zeng, 'Global Experiences with Special Economic Zones — With a Focus on China and Africa' (Report, World Bank, 2015) 5.

<sup>16</sup> Douglas Zhihua Zeng, 'How Do Special Economic Zones and Industrial Clusters Drive China's Rapid Development' in Douglas Zhihua Zeng (ed), *Building Engines for Growth and Competitiveness in China* (World Bank, 2010) 36.

In recent decades, there has been an increasing amount of literature concerning the north's environmental significance,<sup>17</sup> population,<sup>18</sup> governance<sup>19</sup> and economic development.<sup>20</sup> These fields of research overlap, for example, between indigenous inhabitants and economic development.<sup>21</sup> There has been a range of

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<sup>17</sup> See, eg, Henry Nix, Brendan Mackey, Barry Traill and John Woinarski, *The Nature of Northern Australia: its natural values, ecological processes and future prospects* (ANU Press, 2007); Stuart Blanch, 'Steps to a sustainable Northern Australia' (2008) 9 *Ecological Management & Restoration* 110.

<sup>18</sup> See, eg, Marcia Langton, *Burning Questions: emerging environmental issues for indigenous peoples in Northern Australia* (Centre for Indigenous Natural and Cultural Resource Management, Northern Territory University, 1998); Keith Storey, 'Fly-in/Fly-out and Fly-over: Mining and regional development in Western Australia' (2001) 32 *Australian Geographer* 133.

<sup>19</sup> See, eg, Allan Dale, 'Governance Challenges for Northern Australia' (Working Paper, The Future of Northern Australia Discussion Paper Series, Cairns Institute, James Cook University, 2013).

<sup>20</sup> See, eg, Bruce Robinson Davidson, *The Northern Myth: a study of the physical and economic limits to agricultural and pastoral development in tropical Australia* (Melbourne University Press, 1965); Percy Philip Courtenay, *Northern Australia: patterns and problems of tropical development in an advanced country* (Longman Cheshire, 1982); Susan Bandias and Siva Ram Vemuri, 'Telecommunications infrastructure facilitating sustainable development in rural and remote communities in Northern Australia' (2005) 29 *Telecommunications Policy* 237; Ryan Daniel, 'Creative industries in the tropics: Reflections on creativity and north-eastern Australia as place' (2015) 36 *Singapore Journal of Tropical Geography* 215.

<sup>21</sup> See, eg, Jon C Altman (ed), *Aborigines, Tourism and Development: the Northern Territory Experience* (North Australia Research Unit, Australian National University, 1988); Gregory Crough, *Visible and invisible: Aboriginal people in the economy of northern Australia* (Northern Australia Research Unit, Australian National University, and the Nugget Coombs Forum for Indigenous Studies, 1993); Don Fuller and Lee David Parker, *Indigenous economic development in Northern Australia: opportunities and constraints* (Central Queensland University Press, 2002); Jon C Altman, 'Economic development and Indigenous Australia: contestation over property, institutions and ideology' (2004) 48 *Australian Journal of Agricultural and Resource Economics* 513; Don Fuller, Julia Caldicott, Grant Cairncross and Simon Wilde, 'Poverty, Indigenous Culture and Ecotourism in Remote Australia' (2007) 50 *Development* 141.

reports from government<sup>22</sup> and semi-autonomous bodies<sup>23</sup> dealing with various aspects of development in Northern Australia. While SEZs in China have been scrutinised,<sup>24</sup> and the idea of their potential for Australia mooted,<sup>25</sup> drawing upon China's experience to discern the possibility of SEZs in future Government planning for the north's development seems more unique. Our paper provides a brief overview of China's SEZ's with a view to how that experience may help discern at least traces of the Committee's notion of their limited use within the Australian Government's plan to develop the north.

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<sup>22</sup> See, eg, House of Representatives Standing Committee on Regional Australia, Parliament of Australia, *Cancer of the bush or salvation for our cities?: Fly-in, fly-out and drive-in, drive-out workforce practices in Regional Australia* (2013); Australian Government, The Treasury, Northern Australian Insurance Premiums Taskforce, *Interim Report* (2015); Australian Government, Department of Infrastructure and Regional Development, Northern Australia Roads Programme, 'Encouraging Private Sector Investment' (Discussion Paper, 2015); Education and Health Standing Committee, Parliament of Western Australia, *The impact of FIFO work practices on mental health* (2015).

<sup>23</sup> See, eg, Commonwealth Scientific and Industrial Research Organisation CSIRO, *Water in northern Australia: Summary of reports to the Australian Government from the CSIRO Northern Australia Sustainable Yields Project* (Report, 2009); Northern Australia Land and Water Taskforce, *Final Report* (2010); Regional Australia Institute, *Rethinking the Future of Northern Australia's Regions: more than mines, dams and development dreams* (Regional Research Report, 2013).

<sup>24</sup> For recent examples, see Horace Yeung, 'A tale of two cities — the development and reform experiences of Shenzhen and Shanghai' (2015) 13 *Journal of Chinese Economic and Business Studies* 369; Qianqi Kay Shen, *Negotiating Governance: Central-Local Government Relations in the Establishment of Special Economic Zones in China* (PhD Thesis, Graduate School-New Brunswick Rutgers, The State University of New Jersey, 2015).

<sup>25</sup> See, eg, Adam Creighton, 'Top End top spot for special economic zone', *The Australian Business Review* (Sydney), 15 February 2013; 'Business Group backs Special Economic Zone Plans', *Australian Broadcasting Commission* (online), 5 September 2013 <<http://www.abc.net.au/news/2013-09-05/nt-chamber-of-commerce-on-northern-special-economic-zone/4937334>>; Carey Ramm, 'Special Economic Zones' (presentation delivered at the National Economic Development Conference, Darwin, 30 October 2014); For a report on proceedings at the Northern Development Summit, Townsville, 27-28 June 2014 see David Sparkes, 'Special Economic Zones could work for Northern Australia: World Bank Economist' *Business Acumen Magazine* (online) <<http://www.businessacumen.biz/index.php/31-news/development/623special-economic-zones-could-work-for-northern-australia-world-bank-economist.html>>.

Our paper has three main sections. Section II outlines the background to the Government's plan to develop the north, and speculates upon the Committee's notion of limited use of SEZs. Section III describes China's experimentation with SEZs, their strengths and weaknesses, and the devolution and implementation of China's regulation-making power. Section IV draws on China's experience to speculate upon the notion of limited use of SEZs within the Australian Government's plan to develop the north. The conclusion is followed by two appendices: Appendix A contains figures showing aspects of China's SEZ development in tabular form; and Appendix B shows the income taxation zones in Australia.

## II AUSTRALIA: PROPOSALS TO DEVELOP NORTHERN AUSTRALIA AND THE 'LIMITED USE' OF SEZS

### A *Proposals to develop Northern Australia*

How to develop Northern Australia has been a perennial question that has long bedevilled Australia's politicians and bureaucrats alike.<sup>26</sup> For example, in 1947 the Northern Australian Development Committee published a major report on the *Development of Northern Australia*.<sup>27</sup> Since 2010, the Institute of Public Affairs (IPA), a free market think tank, has advocated the creation of an SEZ in Northern Australia.<sup>28</sup> In 2012 the Australian Government released a White Paper, *Australia in the Asian Century*, which noted that '[s]trong

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<sup>26</sup> See Allan Dale, 'Northern Australia should have a say in its own future', *The Conversation* (online), 6 August 2013 <<https://theconversation.com/northern-australia-should-have-a-say-in-its-own-future-16469>>.

<sup>27</sup> Herbert Cole Coombs, *Development of Northern Australia*, Report of the Northern Australian Development Committee, (Canberra, 1947) as cited in Parliamentary Joint Select Committee on Northern Australia, above n 3, 2.

<sup>28</sup> Tim Wilson, *Unleash the North* (Institute of Public Affairs, 2010). See also, Gina Rinehart, *Northern Australia and then some: Changes We Need to Make Our Country Rich* (2012).

demand from Asia will support development across northern Australia from Western Australia to Queensland ...'.<sup>29</sup>

In June 2013, the Coalition's<sup>30</sup> *2030 Vision for Developing Northern Australia* promised that if it won the forthcoming election it would produce a White Paper on developing Northern Australia that would consider, inter alia, building:

... on key existing urban zones — such as Darwin,<sup>31</sup> Cairns, Townsville<sup>32</sup> and Karratha<sup>33</sup> — with the aim of substantially increasing the population in these areas. To this end, the efficacy and targeting of current relocation incentives and personal and business tax incentives could be reviewed.<sup>34</sup>

This would involve eliminating some governmental regulation and taxes, in particular the (then) existing taxes on carbon emissions and mining revenues;<sup>35</sup> coordinating and integrating the provision of services by government agencies; and the development of commercial and social infrastructure, such as transport arteries, hospitals and schools.<sup>36</sup> However, the Coalition's promises stopped short of suggesting the implementation of SEZs in the north.

In August 2013, the Australian Labor Party, the (then) Federal governing party, advocated creating an SEZ in the Northern Territory as part of its campaign for re-election. It was envisioned that this SEZ would '... attract new investment through simplifying investment

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<sup>29</sup> Australian Government, *Australia in the Asian Century* (2012) 9.

<sup>30</sup> A formal alliance of centre-right parties in Australian politics comprising the Liberal Party and the National Party.

<sup>31</sup> Capital of the Northern Territory.

<sup>32</sup> Cairns and Townsville are major coastal cities in Far North Queensland.

<sup>33</sup> A major city in the Pilbara region, Western Australia.

<sup>34</sup> Liberal Party, *The Coalition's 2030 Vision for Developing Northern Australia*, (June, 2013) 5.

<sup>35</sup> Elected into government in September 2013 the Coalition Government repealed the carbon pricing scheme and the mineral resource rent tax, legislation enacted by the previous parliament.

<sup>36</sup> Liberal Party, above n 34, 10-2.



rules ... streamlining regulation and application processes for major projects and introducing new company tax incentives for business with the objective of reducing the corporate tax rate for Territory-based companies in five years'. This 'vision' was criticised as a mere electioneering 'thought bubble' and dismissed as 'catch-up politics'.<sup>37</sup>

B *The notion of 'limited use' of SEZs in developing Northern Australia*

In the national election, held in September 2013, the Coalition won the majority of seats in Parliament and became the new Australian Government. At the end of 2013 the Committee<sup>38</sup> was appointed comprising members from both Houses of the Australian Parliament. The Committee was charged with considering '... policies for developing the parts of Australia which lie north of the Tropic of Capricorn, spanning Western Australia, Northern Territory and Queensland'.<sup>39</sup> This inquiry was to be conducted in tandem with the Federal government's commitment to produce a White Paper on Northern Australia. The Committee's terms of reference included providing recommendations to:

- i) enhance trade and other investment links with the Asia-Pacific;
- ii) establish a conducive regulatory, taxation and economic environment;
- iii) address impediments to growth; and
- iv) set conditions for private investment and innovation ...<sup>40</sup>

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<sup>37</sup> Judith Ireland and Daniel Hurst, 'Tax cuts, economic zone part of Kevin Rudd's plans to develop northern Australia', *The Sydney Morning Herald* (online), 15 August 2013 <<http://www.smh.com.au/federal-politics/federal-election-2013/tax-cuts-economic-zone-part-of-kevin-rudds-plans-to-develop-northern-australia-20130815-2rybz.html>>; Emma Griffiths, 'Rudd pushes into NT with company tax pledge', *Australian Broadcasting Commission*, 15 August 2013.

<sup>38</sup> That is, the Joint Select Committee on Northern Australia.

<sup>39</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, xvii.

<sup>40</sup> *Ibid.*

The Committee received submissions from a wide cross-section, including Commonwealth, State and Territory Ministers, local councils and communities, peak business bodies, and universities. The Committee held public hearings in the Australian Capital Territory, Northern Territory, Queensland and Western Australia.<sup>41</sup> In June 2014, the Committee of Inquiry released an interim report, *Inquiry into the Development of Northern Australia*.<sup>42</sup> In its final report, *Pivot North: Inquiry into the Development of Northern Australia*, released in September 2014, the Committee recommended ‘... that the Australian Government conducts a full investigation of the potential and practicality of special economic zones in Northern Australia’.<sup>43</sup> While acknowledging there were legal hurdles to surmount, the Committee considered ‘... that limited use of special economic zones will provide a mechanism for promoting growth and development across Northern Australia’.<sup>44</sup>

### C *No SEZ in Northern Australia*

In June 2014, the Australian Government released its *Green Paper on Developing Northern Australia*.<sup>45</sup> This paper had been foreshadowed in the Government’s pre-election commitment, *The Coalition’s 2030 Vision for Developing Northern Australia*.<sup>46</sup> The Green Paper noted that there was ‘... interest in special economic zones covering parts or all of northern Australia’ but cautioned that ‘the merits of such arrangements in northern Australia — and the

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<sup>41</sup> Ibid 9.

<sup>42</sup> Parliamentary Joint Select Committee on Northern Australia, Parliament of Australia, *Inquiry into the Development of Northern Australia: Interim Report* (2014).

<sup>43</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, recommendation 5, 170 [5.27].

<sup>44</sup> Ibid 170 [5.28].

<sup>45</sup> Australian Government, *Green Paper on Developing Northern Australia* (2014). A ‘Green Paper’ outlines government proposals to stimulate discussion. See *Oxford English Dictionary (OED Online)* <<http://www.oed.com/view/Entry/81167?redirectedFrom=%27green+paper%27#eid2427441>>.

<sup>46</sup> Liberal Party, above n 34, 7.

implications for other parts of the country — need to be carefully examined’.<sup>47</sup>

The Australian Government’s White Paper, *Our North, Our Future*, released on 18 June 2015, laid out a policy framework ‘to unlock the north’s vast potential’ by 2035.<sup>48</sup> The Government argued that the reason for this long term policy was because ‘... a strong north means a strong nation’.<sup>49</sup> The Australian Government saw this White Paper as ‘... an essential part of our plan to build a strong, prosperous economy and a safe, secure Australia’.<sup>50</sup> Northern Australia’s natural advantages of mineral and gas resource endowments, relatively pristine natural environment, and geographical location as a gateway to trading partners in the Asia-Pacific region, were considered ‘strengths’ of which the Government should take advantage.<sup>51</sup>

Nonetheless, the plan projected in *Our North, Our Future* did not envisage using the SEZ concept. Beneath the heading ‘Why the Government is not declaring the north a Special Economic Zone’, the White Paper stated, ‘[i]n Australia, the Constitution prohibits Commonwealth taxation that discriminates between states or parts of states, as well as Commonwealth laws or regulation of trade, commerce or revenue that gives preference to one state or part of a state over another’.<sup>52</sup> This statement paraphrased ss 99 and 51 of the *Commonwealth of Australia Constitution Act*<sup>53</sup> (the Constitution).<sup>54</sup> Section 99 states: ‘[t]he Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any thereof over another State or any part thereof’. Section 51 delineates the heads of legislative power of the Australian

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<sup>47</sup> Australian Government, above n 45, 55.

<sup>48</sup> Australian Government, above n 8, 1.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.* iv.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.* 60.

<sup>53</sup> *Commonwealth of Australia Constitution Act 1900* (Imp).

<sup>54</sup> *Ibid.* note 1.

Parliament. In relation to laws affecting trade, commerce and taxation, s 51 states:

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

- (i) trade and commerce with other countries, and among the States;
- (ii) taxation; but not so as to discriminate between States or parts of States ...

If the Australian Parliament attempted to legislate beyond those heads of powers enunciated in the Constitution, that law would very likely be struck down by the High Court of Australia as being ultra vires.<sup>55</sup> The White Paper, *Our North, Our Future*, continued:

If the policies within SEZs (for example, lower taxation or regulatory requirements) have net advantages for an economy, there is an argument for extending the logic of these policies to the nation as a whole — and not confining the benefits of SEZs to specific regions. This principle underpins many of the measures in this White Paper, which are national in scope while being of particular significance to the north.<sup>56</sup>

Taken at face value, this statement laid to rest any prospect of the concept of a SEZ being part of the policy to develop the north, at least in the near future.

The Government's refusal to entertain a SEZ as part of its plan to develop Northern Australia was not unfounded. One example of a previous top-down attempt at economic development in the North that had failed was the Darwin Trade Development Zone (DTDZ). The DTDZ commenced as a process-type manufacturing entrepot in 1986. The DTDZ's Authority was established '... to streamline bureaucratic procedures and reduce any obstacles which may

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<sup>55</sup> 'Beyond the powers' (of the Australian Parliament).

<sup>56</sup> Australian Government, above n 8, 60.

confront prospective investors'.<sup>57</sup> However, despite the Northern Territory government's expenditure on infrastructure, debt servicing, administration, and promotion, the DTDZ did not become viable. During its 18 years of operation the DTDZ attempted to move toward high technology, joint venture enterprises, however this failed to attract sufficient investor interest.<sup>58</sup> The DTDZ closed in 2003. Factors contributing to the DTDZs demise included Darwin's comparatively small workforce relative to those of its competitors in Asia, the exposure of '... sweat shop, low-tech, export-oriented manufacturing'<sup>59</sup> conditions, and a novice attempt at unfamiliar, high-tech ventures.<sup>60</sup>

#### D *The concept of 'limited use' of SEZ*

Recommendation 5 of the Committee's final report, *Pivot North: Inquiry into the Development of Northern Australia*, had called for the Australian Government to investigate the 'potential and practicality' of SEZs in Northern Australia.<sup>61</sup> The Committee recognised that the creation of SEZs was fraught with 'constitutional issues'.<sup>62</sup> Aside from ss 51 and 99, the Constitution states, '[t]his Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State ...'.<sup>63</sup> Also if a clash occurs between Federal and State law: '[w]hen a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid'.<sup>64</sup> Putting these constitutional restraints aside, the

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<sup>57</sup> John Taylor, *Immigration and Its Labour Market Impact in the Northern Territory* (Australian Government Publishing Service, 1991) 67.

<sup>58</sup> William Tyler, 'Territory Dreaming? Darwin's Trade Zone Experiment and the Asian Connection' (1992) 11 *Social Alternatives* 54-6.

<sup>59</sup> *Ibid* 53.

<sup>60</sup> Australians for Northern Development & Economic Vision (ANDEV), above n 11.

<sup>61</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, recommendation 5, 170 [5.27].

<sup>62</sup> *Ibid* 170 [5.28].

<sup>63</sup> *Commonwealth of Australia Constitution Act 1900* (Imp) s 5.

<sup>64</sup> *Ibid* s 109.

Committee also acknowledged ‘... the possible distortions in investment decisions caused by creating different legal regimes within the same polity’.<sup>65</sup> Nevertheless, despite these obstacles, the Committee considered ‘that limited use of special economic zones will provide a mechanism for promoting growth and development across Northern Australia’.<sup>66</sup>

The Committee did not elucidate upon the meaning of its phrase ‘limited use’. However, if the words are given their ordinary and everyday connotation, ‘limited’ means ‘circumscribed within definite limits, bounded or restricted’.<sup>67</sup> ‘Use’ refers to ‘the act of putting something to work, or employing or applying a thing, for any (esp. a beneficial or productive) purpose’.<sup>68</sup> When combined, the phrase ‘limited use’ suggests the deliberate application of something for any, ideally advantageous or fruitful, purpose. The Committee considered that the limited use of SEZs would provide a ‘mechanism’ for stimulating economic growth in the North.<sup>69</sup> Generally speaking, ‘mechanism’ refers to ‘the interconnection of parts in any complex process, pattern, or arrangement’.<sup>70</sup> This suggests that the Committee’s interest was in employing aspects of the ‘potential and practicality’<sup>71</sup> of SEZs to stimulate economic development in the North. To appreciate the potential and practicality aspects of SEZs, we will now consider China’s experience.

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<sup>65</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, 170 [5.28].

<sup>66</sup> Ibid.

<sup>67</sup> See *Oxford English Dictionary (OED Online)* <<http://www.oed.com.ezproxy.flinders.edu.au/view/Entry/108491?redirectedFrom=limited#eid>>.

<sup>68</sup> Ibid.

<sup>69</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, 170 [5.28].

<sup>70</sup> See *Oxford English Dictionary (OED Online)* <<http://www.oed.com/view/Entry/115557?redirectedFrom=mechanism#eid>>.

<sup>71</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, recommendation 5, 170 [5.27].

### III CHINA: SEZS

#### A *China's SEZ experience*

By 1976, the year of Chairman Mao Zedong's death, China's experimentation with developing heavy industry was in tatters. The dawning realisation was that the path to socialist modernity lay in adopting Western capitalist 'know-how' to evolve from a command to a market economy. In December 1978, the Third Plenary Session of the 11th Central Committee of the Central Committee Congress of the Communist Party of China (CPC) recognised Deng Xiaoping as its paramount leader, and decided to pursue his open-door, economic reform policy. This decision was motivated by ideology, pragmatism, the need to create employment and upgrade technology, the need to develop export markets, and the need for foreign exchange earnings.<sup>72</sup>

China's SEZ development occurred in three ways. Firstly, in 1980 officially designated SEZs were established, initially in the coastal regions of Shenzhen, Zhuhai and Shantou in Guangdong province, and later in Xiamen in Fujian province. In 1988, the island of Hainan was declared an SEZ. These pilot economic zones included light manufacturing industry, commerce, and agriculture. Later SEZs followed, for example, the Shanghai Pudong New Area in 1989 and the Tianjin Binhai New Area in 2006.<sup>73</sup> Secondly, Economic and Technological Development Zones (ETDZs) were established, supervised by the Ministry of Commerce. Commencing in 1984, the first ETDZs were established in eleven major coastal cities.<sup>74</sup> By September 1986, China had thirteen ETDZs.<sup>75</sup> Gradually, more

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<sup>72</sup> Asskildt, above n 12, 42; Ann Fenwick, 'Evaluating China's Special Economic Zones' (1984) 2 *International Tax & Business Lawyer* 379.

<sup>73</sup> Zeng, above n 16, 5.

<sup>74</sup> Henry R Zheng, 'The legal Structure of Economic and Technological Development Zones in the People's Republic of China' (1987) 5 *International Tax & Business Lawyer* 71.

<sup>75</sup> *Ibid* 99.

ETDZs were established inland.<sup>76</sup> Typically, an ETDZ is located within a suburban region of a large city and special policies apply. For example, the Tianjin Economic-Technological Development Area (TEDA) occupies 0.4 percent of Tianjin's physical area and accounts for approximately 18 percent of that city's gross domestic product.<sup>77</sup> Another more unusual example is the Suzhou Industrial Park (SIP), founded in 1994 by the governments of China and Singapore.<sup>78</sup> By December 2014, China had 218 ETDZs.<sup>79</sup> Thirdly, High-tech Industrial Development Zones (HIDZs), supervised by the Ministry of Science and Technology, were developed.<sup>80</sup> In the late 1980's, China's Ministry of Science and Technology had initiated the 'Torch Program', aimed at melding the technological and research skill of universities with large and medium sized enterprises 'to develop new high-technology products and expedite the commercialization of innovations'.<sup>81</sup> HIDZs are state-level science and technology industrial parks, usually located next to universities, aimed at commercialising research in industries such as information technology, electronics, pharmaceuticals and so on, and creating synergies among academic and financial institutions.<sup>82</sup> In 1988, the first HIDZ was established in connection with the Chinese Academy of Sciences, located in the (then) budding technological area of Zhongguancun in Beijing's Haidian District. Since then, many other HIDZs have been established: by March 2015, China had 129 HIDZs.<sup>83</sup>

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<sup>76</sup> 'The Notice of the CPC Central Committee and the State Council on Approval of the Meeting Recorder for the Symposium of Some Coastal Cities' ([1984] No 13) in Zhong Fa, *China's SEZs Literature* (Social Sciences Academic Press, first series, 2010).

<sup>77</sup> China Knowledge, *China's Industrial Parks, the Vehicles of China's Growth* (2013) <<http://www.chinaknowledge.com/NewsWires/CADetail.aspx?Cat=%22ECO%22&NewsID=67>>.

<sup>78</sup> China Knowledge, *Introduction to China's Industrial Parks* (2014) <<http://www.chinaknowledge.com/Manufacturing/Introduction.aspx?subchap=3&content=7>>.

<sup>79</sup> The State Council of China (2014) <[http://www.gov.cn/2014-12/10/content\\_2789245.htm](http://www.gov.cn/2014-12/10/content_2789245.htm)>.

<sup>80</sup> Ibid 10.

<sup>81</sup> China Knowledge, above n 77.

<sup>82</sup> Ibid; China Briefing, *Understanding Development Zones in China*, (2011) <<http://www.chinabriefing.com/news/2011/10/05/understandingdevelopment-zones-in-china.html>>.

<sup>83</sup> The 129 HIDZs are listed at <<http://www.most.gov.cn/gxjscopyfq/gxjsgxqm>



To complement the economic activity generated in these various zones, special customs supervision and bonded areas have been created to facilitate the logistical and duty-free importation and exportation of goods, for example, the Zhuhai Macao Cross-Border Industrial Zone<sup>84</sup> and the Kazakhstan Huoerguosi International Border Cooperation Centre.<sup>85</sup> China now has 113 special customs areas dotted across 28 provinces.<sup>86</sup> A newer, post-SEZ phase in China's economic evolution is the Pilot Free Trade Zone (PFTZ). The China (Shanghai) PFTZ was officially launched in Shanghai on 29 September 2013, to pioneer an unprecedented degree international trade in all goods and services, except those on a 'negative list' delineating which investment sectors are off-limits to foreign investors.<sup>87</sup> There are currently plans to review the China

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l/>. See also <[http://www.gov.cn/xinwen/2015-03/27/content\\_2839060.htm](http://www.gov.cn/xinwen/2015-03/27/content_2839060.htm)>.

<sup>84</sup> Guo Han, *Reply of the State Council on the Establishment of Zhuhai- Macao Cross-Border Industrial Zone* ([2003] No 123) <[http://www.gov.cn/zhengce/content/2008-03/28/content\\_1557.htm](http://www.gov.cn/zhengce/content/2008-03/28/content_1557.htm)>.

<sup>85</sup> *The Conditions of China and Kazakhstan Huoerguosi International Border Cooperation Centre* (2014) <<http://www.xjhegs.gov.cn/hzzxjs/xiangmu/3067.html>>; Guo Fa, *Guiding opinions of the State Council on Promoting the Scientific Development of Special Customs Supervision* ([2012] No 58) <[http://www.gov.cn/zhengce/content/2012-11/02/content\\_3750.htm](http://www.gov.cn/zhengce/content/2012-11/02/content_3750.htm)>.

<sup>86</sup> See *The China General Administration of Customs* (2014) <[http://www.gov.cn/xinwen/2014-05/07/content\\_2673558.htm](http://www.gov.cn/xinwen/2014-05/07/content_2673558.htm)>.

<sup>87</sup> Prohibited sectors include certain agricultural, forestry and aqua-cultural activities; some non-ferrous metal mining; certain food and beverage processing; certain pharmaceutical manufacturing; automobile, urban transport and aircraft manufacturing; air traffic control systems management; certain civil engineering projects; postal and courier services; internet and related services; securities investment fund management and insurance; leasing and other real business services; certain scientific research and technology services; certain educational, health and social activities; and certain cultural, sports, radio, television and film entertainment. See Shanghai Municipal People's Government, *Special Administrative Measures (Negative List) on Foreign Investment Access to the China (Shanghai) Pilot Free Trade Zone* (2013) <[http://www.shanghaifretradezone.org/en/Negative\\_List.pdf](http://www.shanghaifretradezone.org/en/Negative_List.pdf)>. See also Pinsent Masons, *China announces pilot free trade zones* (21 April 2015) <<http://www.out-law.com/en/articles/2015/april/china-announces-pilot-free-trade-zones/>>; Deloitte Touche Tohmatsu Limited, *China (Shanghai) Pilot Free Trade Zone — Dawn of a new era* (2013) <<http://www2.deloitte.com/content/dam/Deloitte/cn/Documents/tax/shanghai-pilot-free-trade-zone/placemat/deloitte-cn-tax-shpftz-placemat-en-010813.pdf>>.

(Shanghai) PFTZ and establish PFTZs in Guangdong, Tianjin and Fujian.<sup>88</sup>

B *The devolution of China's SEZ regulation-making power*

Prior to its experimentation with SEZs, the CPC planned and managed China's national economy. At that time local provincial governments held only executive, not legislative power. In December 1978, the Third Plenary Session of the 11<sup>th</sup> Central Committee of the CPC decided to embark upon market-oriented economic reform under the control of the Central Government. The outcome of such reform was unknown. China's national humiliation and foreign subjugation at the hands of imperialist Western powers and hegemonic Japan between 1839 and 1949 was seared upon the collective memory.<sup>89</sup> Consequently the CPC decided to limit its experimentation with capitalism to specific geographical SEZs, first in Guangdong and later in Fujian and Hainan provinces, rather than open up a free-market economy nationwide. During 1979 and early 1980, Guangdong drafted SEZ legislation. Eleven versions of draft SEZ regulations were produced during the course of extensive discussions between officials from Guangdong and economists from China, Hong Kong and Macao. In December 1979, the Guangdong Provincial People's Congress adopted draft SEZ regulations, which were submitted to the State Council for further refinement.<sup>90</sup> Following approval for implementation by the 15<sup>th</sup> Meeting of the Standing Committee of the Fifth National People's Congress (NPC) on 26 August 1980, this legislation was promulgated as *The Regulations on Special Economic Zones in Guangdong Province* (the Guangdong Regulations) and went into immediate effect.<sup>91</sup> This declaration was significant as it marked the first time that China's Central Government had proclaimed legislation which had been initiated and primarily drafted at the provincial level.

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<sup>88</sup> Xinhuanet, *China announces plans for pilot free trade zones*, 20 April 2015 <[http://news.xinhuanet.com/english/2015-04/20/c\\_134167136.htm](http://news.xinhuanet.com/english/2015-04/20/c_134167136.htm)>.

<sup>89</sup> Alison Adcock Kaufman, 'The "Century of Humiliation" Then and Now: Chinese Perceptions of the International Order' (2010) 25 *Pacific Focus* 1, 1-33.

<sup>90</sup> Fenwick, above n 72, 379.

<sup>91</sup> *Regulations on Special Economic Zones in Guangdong Province* art 26.

As the development of modern China burgeoned, pressing affairs of state meant that the NPC could not continue to enact further SEZ regulations which had been drafted at the provincial level. Consequently, on 26 November 1981, the 21<sup>st</sup> meeting of the Standing Committee of the 5<sup>th</sup> NPC granted the people's congresses in Guangdong and Fujian provinces permission to enact separate economic regulations for their SEZs.<sup>92</sup> This devolution of regulation-making power was done '... with a view to ensuring the smooth progress of construction in the special economic zones in the two provinces, fully adjusting economic management in the special economic zones to the needs in the work there, and giving a more effective role to the special economic zones'.<sup>93</sup>

In December 1982, the 15<sup>th</sup> National People's Congress enacted China's Fourth Constitution.<sup>94</sup> Under this Constitution the National People's Congress was empowered to delegate law-making power from the central government to provincial legislatures — the local people's congresses — which in turn, delegated rule-making power to municipal authorities.<sup>95</sup> Consequently the development of the SEZs in Shenzhen, Zhuhai and Shantou was undertaken by the Guangdong provincial government. Local rule-making power was extended to the Peoples' Congresses in Hainan in 1988, Shenzhen in 1992, Xiamen in 1994, and Zhuhai and Shantou in 1996, allowing them to formulate municipal laws and regulations affecting, for example, land rent, taxation and labour-hire within their respective SEZs. Local rules were drafted along the lines of similar national laws and regulations. As a result, local bodies governing SEZs were able to enact rules which allowed them to better address issues that were peculiar to their particular region. For example, local rules concerned industry and commerce administration; the management

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<sup>92</sup> *Resolution of the Standing Committee of the National People's Congress Authorizing the People's Congresses of Guangdong and Fujian Provinces and Their Standing Committees to Formulate Separate Economic Regulations for Their Respective Special Economic Zones*, 26 November 1981.

<sup>93</sup> *Ibid.*

<sup>94</sup> China's first Constitution was created in 1954, the second in 1975, and a third in 1978. The fourth Constitution, the *Constitution of the People's Republic of China 1982*, promulgated on 4 December, 1982, is the current constitution.

<sup>95</sup> *Constitution of the People's Republic of China 1982* art 96, 99, 105.

of land, personnel and labour; commodity property management; the provisions of foreign economic contracts; the introduction of technology; the movement of personnel between the SEZs and non-SEZs; and the establishment and operation of foreign invested companies. This web of local-level rules has formed the basis of China's open market economy.

### C *China's first SEZ regulations in practice*

In practice, as well as applying to the first SEZs established in Shenzhen, Zhuhai and Shantou, the Guangdong Regulations became the basic legislative framework for the SEZs established later in Xiamen and the island of Hainan. The Guangdong Regulations central theme was the attraction of foreign capital. Initially, foreign capital flowed into the SEZs mainly from the Chinese diaspora in Hong Kong, a tendency attributable to a '... shared cultural affinity, family ties in China, or patriotism'.<sup>96</sup> Western investors were wary about China in the early 1980's.<sup>97</sup> A wellspring for this investor hesitancy was that the Guangdong Regulations were couched in the broadest terms: no specifics were provided on matters such as dispute resolution procedures, immigration procedures, details of preferential tax treatment for certain enterprises, import tariffs, foreign exchange regulation, wage levels, land rents or lease durations.<sup>98</sup> The omnicompetent Guangdong Provincial Committee was authorised to deal with a broad sweep of administrative, political, and judicial functions. Similarly, the role prescribed for the Guangdong Provincial Special Economic Zones Development Company proved to be somewhat enigmatic in practice.

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<sup>96</sup> Fenwick, above n 72, 384.

<sup>97</sup> Organisation for Economic Co-operation and Development (OECD), 'Main Determinants and Impacts of Foreign Direct Investment on China's Economy' (OECD Working Papers on International Investment No 2000/ 04, OECD, 2000) 4-5.

<sup>98</sup> Fenwick, above n 72, 384.

#### D *China's subsequent SEZ regulations*

The Guangdong Regulations' lack of specificity was quickly recognised as an impediment to foreign investment in the SEZs. During 1981, new SEZ legislation was drafted in Guangdong and submitted to the NPC. On 1 January 1982, the NPC approved and promulgated four sets of legislation: *Provisional Entry/ Exit Regulations (Guangdong Special Economic Zones)*; *Provisional Regulations for Business Registration (Guangdong Special Economic Zones)*; *Provisional Labour and Wage Regulations (Guangdong Special Economic Zones)*; and *Provisional Land Regulations for Shenzhen Special Economic Zone*. This legislation simplified red tape requirements concerning entry and exit procedures for foreign nationals, overseas Chinese and compatriots from Hong Kong, Macao and Taiwan; business registration; labour and wages; and land issues in the SEZs.<sup>99</sup> For example, beginning in 1981, the PRC allowed SEZs to lease land to investors for periods of 20 to 50 years with the possibility of renewal.<sup>100</sup> Subsequent regulations addressed a range of concerns including foreign banking, mortgage investment protection, intellectual property, business structures, employment and contractual issues in the SEZs.<sup>101</sup> For example, the *Labour Regulations Governing the Special Economic Zones of Guangdong Province*, effective from 1 October 1988, regulated employee recruitment, remuneration, training, working conditions, discipline, disputes, dismissal and resignation. *The Provisional Rules of the Shenzhen Special Economic Zone on the Resident Offices of Foreign Enterprises*, effective from 29 January 1994, delineated the procedure for setting up and running offices in Shenzhen SEZ by '... merchants, manufacturers, freight agents and other economic organisations (groups) of foreign countries'.<sup>102</sup> Reforms such as these helped gradually dispel western investor cautiousness. Despite a brief resurgence of investor hesitancy in the

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<sup>99</sup> Ibid 385; *Interim Provisions of the Special Economic Zones in Guangdong Province for the Control of Personnel Entering or Leaving China*, 24 December 1981.

<sup>100</sup> Zeng, above n 15, 5.

<sup>101</sup> Fenwick, above n 72, 386.

<sup>102</sup> *The Provisional Rules of the Shenzhen Special Economic Zone on the Resident Offices of Foreign Enterprises* (29 January 1994) art 2.

immediate aftermath of the Tiananmen Square protests in 1989,<sup>103</sup> by the end of the 20<sup>th</sup> century, China had experienced a twenty-fold increase in capital investment.<sup>104</sup> For example, as shown in Table 1 (see Appendix A) the growth in the amount of foreign capital actually utilised within the Shenzhen, Zhuhai, Shantou, Xiamen and Hainan SEZs from their year of commencement up to 2012 has been inexorable.

### E *China's SEZs: strengths*

The following strengths can be extrapolated from China's successful SEZ experience:

#### 1 *Government commitment to economic transformation*

The CPC's commitment to transforming the economy was paramount to the success of China's experimentation with SEZs. Under Deng Xiaoping's guidance the CPC's official ideology became 'Socialism with Chinese characteristics'.<sup>105</sup> In terms of governance arrangements, China's central government's determination, coupled with the devolution of decision-making power, gave local government the political autonomy to develop the necessary physical, regulatory and bureaucratic infrastructure needed to nurture each SEZ. 'One stop shops' were established in the SEZs, providing administrative efficiency by facilitating access to preferential benefits, such as taxation relief and swift customs clearance on the ingress of materials and egress of finished products.<sup>106</sup>

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<sup>103</sup> In April-May 1989, following the death of the former reformist CPC General Secretary Hu Yaobang, student-led protests erupted across China and crystallised in the occupation of Beijing's Tiananmen Square. These protests were violently suppressed by the Chinese Government.

<sup>104</sup> Organisation for Economic Co-operation and Development (OECD), above n 97, 5.

<sup>105</sup> Hu Jintao, above n 13.

<sup>106</sup> Zeng, above n 15, 5; Zeng, above n 16, 16.

## 2 *Pragmatism and practicality: a gradualist approach to reform*

In keeping with the traditional Chinese dictum ‘seek truth from facts’, the CPC’s rationale for economic reform was encapsulated in Deng Xiaoping’s maxim: ‘black or white, so long as it catches a mice, it’s a good cat’.<sup>107</sup> This pragmatism was tempered by an incremental approach, with SEZs being used as crucibles for economic innovation.<sup>108</sup> Typifying this measured approach, each SEZ set clear goals; development plans; and expected growth targets in terms of gross domestic production (GDP), employment, exports and foreign direct investment (FDI).<sup>109</sup> For example, the success of this step-by-step approach is reflected in the remarkable growth in GDP for the first SEZs in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan, from around the time of their inception up to 2012 (see Table 2 in Appendix A).

## 3 *Inflow of foreign investment*

Monetary and non-monetary incentives were used to encourage foreign investment in the SEZs. For example, for foreign investors, the corporate tax rate was initially 15 percent as opposed to 30 percent for local firms. This was later replaced by a uniform corporate tax of 25 percent across China. Non-monetary incentives included streamlined administrative processes, for example for customs clearance, and flexible labour regulations giving employers more control over the recruitment and dismissal of staff.<sup>110</sup>

SEZs facilitated the inflow of foreign investment, particularly from the Chinese diaspora in Hong Kong, Macao and Taiwan. For example, the amount of foreign capital actually utilised in the SEZs in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan rose by staggering amounts between the year of each SEZs establishment and 2012 (see Table 1 in Appendix A). This financial influx also

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<sup>107</sup> The original sentence was ‘yellow or white, so long as it catches a mice, it’s a good cat’ quoted in ‘How to Restore Agricultural Production’ speech of 7 July 1972 by Deng Xiaoping, *Selected works of Deng Xiaoping* (People’s Publishing House, 1989) vol 1, 323.

<sup>108</sup> Asskildt, above n 12, 57.

<sup>109</sup> Zeng, above n 15, 6; Zeng, above n 16, 38.

<sup>110</sup> Zeng, above n 15, 5.

provided learning opportunities in new technologies, management, marketing and product innovation. The upshot has been the development of industrial clusters,<sup>111</sup> linking industries, financial providers, educational institutions and governmental agencies within a common geographical area, usually close to main roads, railways, highways and ports.

#### 4 *Population growth, employment and skill development*

Given China's abundant and comparatively cheap workforce, many foreign enterprises in the early SEZs concentrated on the labour-intensive production of manufactured goods for the export market. This resulted in a population influx as workers from across China flocked into Shenzhen, Zhuhai, Shantou, Xiamen and Hainan seeking relatively low-skilled employment in mass producing consumer items. For example, Table 3 (in Appendix A) shows the population growth resulting from this internal migration within the early SEZs. This influx required flexibility with China's residency permit system (*hukou*);<sup>112</sup> mass, high rise public housing; and the provision of educational, social, cultural and health facilities. Such demand was met with varying degrees of success.<sup>113</sup> To strike a balance, the CPC gradually created ETDZs and HIDZs, attracting highly skilled personnel, focussing upon upmarket research and development opportunities.<sup>114</sup>

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<sup>111</sup> 'An industrial cluster is generally defined as a geographic concentration of interconnected firms in a particular field with links to related institutions', Zeng, above n 16, 5.

<sup>112</sup> China's household registration (*hukou*) was originally adopted in 1958. In March 2015, at the meeting of the third session of the 12<sup>th</sup> NPC, Premier Li Keqiang announced that reform of China's household registration system, *hukou*, would be accelerated to ensure that migrant workers could become urban citizens (*shiminhua*). Introduced in July 2014, the new policy set up a single national resident registration (*jumin hukou*) system for both rural and urban populations: Bingqin Li, 'China's hukou reform a small step in the right direction', *East Asia Forum* (13 January 2015).

<sup>113</sup> Zeng, above n 15, 6; Zeng, above n 16, 16.

<sup>114</sup> Zeng, above n 15, 6; Zeng, above n 16, 38.



### 5 *Land reform*

The growing recognition that land had a market value promoted a change from allocating industrial sites by administrative approval to leasing them, encouraging foreign investor confidence that their assets were secure, at least for the period of the lease. However, beginning in 1987, the SEZs experimented with auctioning state-owned land, initially for commercial housing projects and later, industrial development.<sup>115</sup> These auctions were intended to accelerate the expansion of infrastructure development. This growing recognition that wealth could be created out of the market value of land was a far-cry from the original notion that farm land was owned collectively and urban land belonged to the State.<sup>116</sup> As shown in Table 4 (see Appendix A), the land area occupied by the SEZs in Shenzhen, Zhuhai, Shantou and Xiamen from the year of their establishment till 2012 rapidly escalated. This was in stark contrast to zero growth in Hainan, simply because the whole island had been declared an SEZ from the outset.

### 6 *Geographical location*

Locating SEZs along China's eastern seaboard, particularly in the Pearl River Delta,<sup>117</sup> the Min Delta<sup>118</sup> and Yangtze River Delta<sup>119</sup> regions, provided access to major coastal cities with major infrastructure links and proximity to foreign investment sources in Hong Kong, Macau and Taiwan.<sup>120</sup>

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<sup>115</sup> Xiaofang Shen and Songming Xu, 'China: Shenzhen Special Economic Zone as a Policy Reform Incubator for Urban Land Market Development' in Xiaofang Shen and Xiaolun Sun (eds), *Untying the Land Knot: Making Equitable, Efficient and Sustainable Use of Industrial and Commercial Land* (World Bank Publications, 2012) 89-95.

<sup>116</sup> Zeng, above n 15, 5.

<sup>117</sup> The Pearl River Delta, a leading manufacturing centre, is located around the Pearl River estuary where the river enters the South China Sea. The region embraces Guangzhou (provincial capital of Guangdong province), Shenzhen, Foshan, Zhuhai, Jiangmen, Zhongshan, Dongguan, and four districts and counties each of Huizhou and Zhaoqing respectively. The region abuts the Hong Kong Special Administrative Region.

<sup>118</sup> The Min Delta is located at the juncture of the largest river in Fujian and the Taiwan Strait.

<sup>119</sup> The Yangtze River Delta region is focused around Shanghai and covers the provinces of Jiangsu to the south and Zhejiang to the north.

<sup>120</sup> Zeng, above n 15, 6.

F *China's SEZs: weaknesses*

Conversely, the following weaknesses can be identified within China's SEZ experience:

1. *Environmental degeneration and health debilitation*

The environmental cost of China's rapid industrialisation includes air, water and soil pollution, desertification and erosion, and habitat and biodiversity loss. It is estimated that one-fifth of China's agricultural land is too polluted to grow crops, nearly 60 percent of groundwater is polluted and air pollution in some parts is 20 times the recommended safe levels.<sup>121</sup> The human cost of China's transformation to an open market economy has been that ever increasing levels of pollution affects the health of many citizens in major population centres. On 24 April 2014, the Standing Committee of the NPC adopted the Revision of China's 1989 Environmental Protection Law (the China EPL), which became effective on 1 January 2015.<sup>122</sup> The updated China EPL includes tougher consequences for violating China's environmental laws, expanding the scope of projects subjected to environmental impact assessment statements, and allowing nongovernmental bodies to issue legal proceedings against polluters on behalf of the public interest.

2 *Rush to imitate SEZs success*

During the 1990s and 2000s, in the hope of imitating the success of the coastal SEZs, many local governments and cities in rural areas set up small scale businesses known as Town and Village Enterprises

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<sup>121</sup> Tom Levitt, 'Ma Jun: China has reached its environmental tipping point', *The Guardian* (Australia), 19 May 2015.

<sup>122</sup> Robert L Falk and Jasmine Wee, 'China's New Environmental Protection Law: Implications for Overseas Investors, Joint Ventures and Trading Partners' (Morrison Foerster, 30 September 2014).

(TVEs).<sup>123</sup> However, many TVEs failed due to lack of planning, increasing competition within China, and corruption.<sup>124</sup>

### 3 *Inadequate provision of social services*

The provision of social and urban services in some SEZs was not commensurate with their rampant economic development. For example, health, education and transportation services often lagged behind economic success.<sup>125</sup>

### 4 *Spill-over effect has not been homogenous*

The anticipated spill-over effect of benefits derived from within SEZs, the cradle of capitalism, into China's greater planned economy beyond has not been homogeneous. The comparatively better living standard enjoyed by citizens in major cities along China's east coast is yet to be disseminated completely to those who live further west.

## IV AUSTRALIA: USING CHINA'S SEZ EXPERIENCE TO SPECULATE ON THE NOTION OF LIMITED USE OF SEZs WITHIN THE PLAN TO DEVELOP THE NORTH

### A *The idea of the limited use of SEZs within the Australian Government's plan for the north*

Our contention is that if the Committee's idea of the limited use of SEZs did refer to harnessing their 'potential and practicality'<sup>126</sup> in

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<sup>123</sup> Operating as village collectives or private companies, TVEs produced light industrial and consumer goods and supplemented rural workers' incomes. At their peak in 1996 TVEs employed 135 million: Barry Naughton, *The Chinese Economy: Transitions and Growth* (2007) Massachusetts Institute of Technology 274.

<sup>124</sup> Zeng, above n 15, 6.

<sup>125</sup> Zeng, above n 16, 41.

<sup>126</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, recommendation 5, 170 [5.27].

developing the north, this notion lies at the margins of the Australian Government's White Paper plan. While not declaring the North an SEZ, the plan delineates policies commensurate with those utilised within SEZs but on the basis of:

... extending the logic of these policies to the nation as a whole — and not confining the benefits of SEZs to specific regions. This principle underpins many of the measures in this White Paper, which are national in scope while being of particular significance to the north.<sup>127</sup>

According to the plan, Northern Australia is not to be considered as a 'special' geographical enclave deserving preferential treatment. Rather, the north's connectivity with the remainder of Australia has to be taken into account. Hence, the plan outlined policies significant to the north, and to the country as a whole. This appears to be the point of departure from the earlier idea mooted by the Committee, that of the limited use of SEZs as a mechanism for economic growth and development in the North. While the Committee tantalisingly left the notion of the limited use of SEZs unexplained, nonetheless the Committee's idea and the White Paper plan's underpinning principle seem to be both striving towards the same outcome of how to implement policies to effect an economic transformation in Northern Australia.

*B Using China's SEZ experience to speculate on the notion of limited use of SEZs within the plan to develop the north*

Any prospect of having SEZs as part of the Australian Government's planned development of the North has now been dismissed. Nonetheless, China's experience may be useful in discerning at least a glimmer of the Committee's conception of the limited use of SEZs within the Australian Government's White Paper plan:

*1 Government commitment to economic growth in the North*

Evocative of China's determination to use SEZs to transform its economy, the Australian Government believes that '[i]nfrastructure

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<sup>127</sup> Australian Government, above n 8, 60.

is critical in linking the dispersed populations and remote businesses in the north'.<sup>128</sup> Many infrastructure projects in the north are either funded by business or provided on a user pay basis. For example, a mining company may build a rail link or road in order to transport coal or other mineral resources from the interior to the coast for export; or a telecommunications or energy provider will charge users for their consumption of those services. However, the Australian Government acknowledged that '[w]here there are difficulties in charging users or where there are broader social benefits, infrastructure is often better funded directly by governments'.<sup>129</sup> A government audit report has identified more than 180 infrastructure needs in the north, including airports, communications, energy, ports, rail, road and water.<sup>130</sup> To fill these infrastructure gaps, the government has proposed a Northern Australia Infrastructure Facility (NAIF) to provide concessional loans to projects to '... fast track 'major projects such as ports, roads, rail, pipelines and electricity and water supply'.<sup>131</sup> These loans could supplement private lending in circumstances where the target project requires 'patient' capital,<sup>132</sup> or is of such magnitude that it is beyond the scale of financial risk normally assumed by commercial financial investors.<sup>133</sup> From 2016-17, the NAIF will offer up to \$5 billion in concessional loans for northern infrastructure development projects.<sup>134</sup> This seems redolent of China's preferential financial treatment for SEZs and smacks at what might have possibly been meant by the Committee's notion of limited use of SEZs in Northern Australia. Nevertheless, the Australian Government's view is that while NAIF funding is 'earmarked' for northern development, there are other 'pools of money' for other infrastructure projects around Australia.<sup>135</sup>

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<sup>128</sup> Ibid 8.

<sup>129</sup> Ibid.

<sup>130</sup> Australian Government, *Infrastructure Australia*, above n 3, 28-37.

<sup>131</sup> Australian Government, above n 8, 8, 13.

<sup>132</sup> Long term capital is where the investor is prepared to sacrifice an immediate return on the expectation of more substantial yields in the longer term.

<sup>133</sup> Australian Government, *Northern Australia Infrastructure Facility*, (Consultation Paper, 2015) 2.

<sup>134</sup> Ibid iv.

<sup>135</sup> ABC Radio National, 'Big Ideas for the Top End', 9 October 2015 (The Hon Josh Frydenberg MP, Federal Member for Kooyong, Minister for Resources, Energy and Northern Australia) <<http://www.abc.net.au/radionational/progra>

Just as the Chinese government experimented with SEZs as a step toward economic reform, the Australian Government is committed to ‘trailing and testing policies’ that will lessen regulation and facilitate business more in the north.<sup>136</sup> Paralleling the Chinese central government’s devolution of SEZ decision-making power to the local people’s congresses, the Australian Government has the Northern Australia Strategic Partnership to realise its vision for the north. This Partnership comprises a biannual meeting of the Prime Minister and Deputy Prime Minister of Australia, with the Premiers of Western Australia and Queensland, and the Chief Minister of the Northern Territory.<sup>137</sup> Developing the north will also be done in full partnership with Indigenous Australians and on advice from the Prime Minister’s Business and Indigenous Advisory Council.<sup>138</sup> Supporting this collaboration is a recommendation that the Committee<sup>139</sup> ‘... be made an enduring feature of future Parliaments’.<sup>140</sup>

Bureaucratically, the Office of Northern Australia (ONA) will remain part of the Department of Infrastructure and Regional Development, located in Canberra, Australia’s capital. However, the ONA has now been relocated to Darwin, the capital of the Northern Territory.<sup>141</sup> This will provide a public service focus on the north within the Australian Government but avoid the cost of creating a new department.<sup>142</sup> The ONA will report to the Deputy Prime Minister of Australia who will give an annual update to the

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ms/breakfast/big-ideas-for-the-top-end/6839812>.

<sup>136</sup> Australian Government, above n 8, 10.

<sup>137</sup> Ibid 118.

<sup>138</sup> Ibid 4, 118.

<sup>139</sup> That is, the Joint Select Committee on Northern Australia.

<sup>140</sup> Australian Government, above n 8, 14, 119.

<sup>141</sup> Minister for Resources, Energy and Northern Australia (Cth), ‘Office of Northern Australia open for business’ (Media Release, 18 December 2015) <<http://www.minister.industry.gov.au/ministers/frydenberg/media-releases/office-northern-australia-open-business>>.

<sup>142</sup> Australian Government, above n 8, 10, 119. This was a rebuttal of the Committee’s recommendation of the creation of a new Department of Northern Australian Development to be based in Northern Australia. See Parliamentary Joint Select Committee on Northern Australia, above n 3, recommendation 1, 165 [5.5].

Australian Parliament on the progress of development in the north. ONA's role will be to coordinate implementation of the Australian Government's White Paper plan across various Australian Government, and state, and territory agencies in the north.<sup>143</sup> While operating on a much larger scale, ONA's role is reminiscent of that carried out by the Guangdong Provincial Committee.

## 2 *Pragmatism and practicality: a gradualist approach to reform*

The combination of pragmatism mixed with circumspection that typified China's foray into SEZs is discernible in the White Paper on developing Northern Australia when it states: '[g]overnment's role is to create successful business environments, not successful businesses'.<sup>144</sup> According to the White Paper this is done '... through prudent economic policies, the right infrastructure to get things moving, regulation that minimises costs on business, a workforce with the right skills, and basic research necessary for business to identify opportunities for the north'.<sup>145</sup> Conversely, '[b]usiness is far better placed to understand the risks and rewards from northern economic development'.<sup>146</sup> Industries acknowledged as having bright growth prospects include food and agribusiness, resources and energy, tourism and hospitality, international education and healthcare, medical research and aged care.<sup>147</sup> Government spending priorities within these areas will be determined by appropriate cost benefit analyses.<sup>148</sup> Government can '... support growth by providing essential information, especially where there are basic knowledge gaps'.<sup>149</sup> For example, an infrastructure pipeline will be created to provide investors with information on potential unmet needs so that approved projects can be built sooner.<sup>150</sup> To its credit, the Australian Government has published its two, five, 10 and 20 years plans for developing the north.<sup>151</sup> This whole notion of having

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<sup>143</sup> Australian Government, above n 8, 10.

<sup>144</sup> Ibid 2.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid 3.

<sup>147</sup> Ibid 56.

<sup>148</sup> Ibid 8.

<sup>149</sup> Ibid 3.

<sup>150</sup> Ibid 9, 13.

<sup>151</sup> Ibid 125-31.

a plan, albeit one that is broader in nature, is evocative of China's approach to establishing its SEZs.<sup>152</sup>

### 3 *Inflow of local and foreign investment*

The Australian Government's key message to investors is: 'Northern Australia — emerging opportunities in an advanced economy'.<sup>153</sup> While the status of the Australian economy is different, this message is not dissimilar to a prime motivator for SEZs in China — the pursuit of foreign capital.<sup>154</sup> However, in the Australian Government's plan, foreign and local investment opportunities are being sought '... to develop a partnership between investors '... who provide the capital and know-how ...' and governments '... that create the right investment conditions ...'.<sup>155</sup> According to the White Paper, '[f]or too long, governments have tied up private sector investment in needless red tape — forgoing the benefits of growth for fear of risks'.<sup>156</sup> To cut through the red tape, the Australian Government, in association with the Northern Territory Government, '... will establish a 'single point of entry' in Darwin for investors in major projects to help them through all regulatory hurdles'.<sup>157</sup> The goal is to '... remove impediments to growth by reducing regulatory risk (while maintaining protections), providing essential information, and underwriting enabling structure. This will lift the growth speed limits in the north ...'.<sup>158</sup> The Australian Government will do this by applying '... a risk neutral, rather than risk averse, framework ...'

<sup>152</sup> Zeng, above n 15, 6; Zeng, above n 16, 38. The success of China's step-by-step approach is reflected in the remarkable growth in gross domestic production (GDP) for the SEZs in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan, from their inception up to 2012 (see Table 2).

<sup>153</sup> Australian Government, above n 8, 7. See also Australian Government, Australian Trade Commission (Austrade), Australia Unlimited, *Northern Australia — Emerging Opportunities in an Advanced Economy* (2015) <<http://www.austrade.gov.au/International/Invest/Investor-Updates/2015/emerging-opportunities-in-northern-australia>>.

<sup>154</sup> Zeng, above n 16, 5. For example, the amount of foreign capital actually utilised in the SEZs in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan rose by staggering amounts between the year of each SEZ's establishment and 2012 (see Table 1).

<sup>155</sup> Australian Government, above n 8, 2-3.

<sup>156</sup> *Ibid* 7.

<sup>157</sup> *Ibid* 7, 12.

<sup>158</sup> *Ibid* 3.



for assessing the impact of regulations on development projects.<sup>159</sup> For example, a Cooperative Research Centre (CRC) for Developing Northern Australia will be established, initially to assess research and development opportunities in agriculture, food and tropical medicine.<sup>160</sup> On the tourism front, regulations impacting upon entry visas will be eased, for example by trialling applications to be lodged in Chinese and fast tracking the approval process for applications from China and India.<sup>161</sup> The idea of a ‘single point of entry’ is analogous to China’s ‘one stop shops’ in its SEZs, providing administrative efficiency by facilitating access to preferential benefits, such as taxation relief and swift customs clearance on the ingress of materials and egress of finished products.<sup>162</sup>

The Australian Government’s plan noted that ‘[h]igh business costs discourage investment, while high living costs can discourage settling in the north’.<sup>163</sup> Whereas the Chinese Government initially offered preferential tax incentives to investors in SEZs,<sup>164</sup> in Australia tax breaks are contentious. Under the Constitution, the Australian Parliament is empowered to make laws regarding taxation, ‘... but not so as to discriminate between States or parts of States’.<sup>165</sup> In its submission to the Inquiry into developing Northern Australia, the Institute of Chartered Accountants Australia stated that ‘... the use of tax incentives to create ‘economic zones’ in one part of the country creates tax competition within our national income tax system (with attendant constitutional concerns) and leads to similar requests elsewhere from those outside the eligibility boundary’.<sup>166</sup> A similar view was expressed by the Chamber of Commerce and Industry Queensland, although it did acknowledge however that ‘...

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<sup>159</sup> Ibid 7.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid 7, 12.

<sup>162</sup> Zeng, above n 15, 5; Zeng, above n 16, 16.

<sup>163</sup> Australian Government, above n 8, 2.

<sup>164</sup> Zeng, above n 15, 5. For example, for foreign investors the corporate tax rate was initially 15 percent as opposed to 30 percent for local firms. This was later replaced by a uniform corporate tax of 25 percent across China.

<sup>165</sup> *Commonwealth of Australia Constitution Act 1900* (Imp) s 51(ii).

<sup>166</sup> Institute of Chartered Accountants, Submission 126 to Parliamentary Joint Select Committee on Northern Australia, *Inquiry into the Development of Northern Australia*, 28 February 2014, 2.

in the short term there is a case to afford some degree of preferential tax treatment to lure business to that area'.<sup>167</sup> The Committee recommended '... that the Australian Government explore reforms to the taxation system to better promote investment and development in Northern Australia'.<sup>168</sup> This recommendation was not taken up in the White Paper plan for developing the north.

#### 4 *Population growth, employment and skill development*

Unlike SEZs in China,<sup>169</sup> Northern Australia has a comparatively small population of approximately 1.3 million, just 5.6 percent of the country's resident population.<sup>170</sup> The high living costs in the north relative to the remainder of Australia have discouraged settlement.<sup>171</sup> The Australian Government's plan is to '... put the north on a trajectory to reach a population of four to five million by 2060'.<sup>172</sup> Mirroring China's SEZ experience, the Australian Government's plan to develop the north envisages employment as the catalyst for population growth. The Australian Government's belief is that '[b]y making the right regulations and infrastructure investments ...'<sup>173</sup> it can drive down business operating costs, encourage employment and make the north '... a more attractive place to invest and work'.<sup>174</sup>

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<sup>167</sup> Nick Behrens, General Manager Advocacy, Chamber of Commerce and Industry Queensland, Committee Hansard, Brisbane, 30 May 2014, 10 in Parliamentary Joint Select Committee on Northern Australia, above n 3, 41 [2.126].

<sup>168</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, recommendation 37, 191 [5.121].

<sup>169</sup> Given China's abundant and comparatively cheap workforce, many foreign enterprises in the early SEZs concentrated on the labour-intensive production of manufactured goods for the export market. This resulted in a population influx as workers from across China flocked into Shenzhen, Zhuhai, Shantou, Xiamen and Hainan seeking relatively low-skilled employment in mass producing consumer items. See Table 3.

<sup>170</sup> Australian Government, above n 133, 1; Australian Government, Infrastructure Australia, above n 3, 6.

<sup>171</sup> Australian Government, above n 133, 2.

<sup>172</sup> Australian Government, above n 8, 9.

<sup>173</sup> *Ibid* iv.

<sup>174</sup> *Ibid*.

The Australian Government has long recognised that the north is a physically harsh environment in which to work and live. Since 1945, Australian residents living in northern regions of Western Australia, Northern Territory and Queensland have received income tax concessions ‘... in recognition of the disadvantages to which they are subject because of uncongenial climatic conditions, isolation and high cost of living’.<sup>175</sup> This zone tax offset is available to taxpayers who have lived and worked in a remote area for a stipulated period during the current income year. Remote areas are classed as either Zone A or Zone B.<sup>176</sup> Almost the entire area embraced by Northern Australia is zoned.<sup>177</sup> Zone A covers the tropical regions where unfavourable factors are more pronounced. Zone B covers the more temperate regions. The tax offset for residents living in Zone A is higher than that applying in Zone B. In the remote and isolated areas almost all goods and produce have to be transported in and access to community services and amenities is sparse. Within each Zone there are particularly isolated areas which have special categories of zone allowances applying to resident taxpayers.<sup>178</sup> This tax support is estimated to cost the Australian Government around \$300 million per year.<sup>179</sup> The Committee had recommended:

... that the Australian Government investigate the equity of the current application of the Zone Tax Offset arrangements so that:

- the Zones reflect the current distribution of population and rebates are increased to reflect the current cost of living in regional and remote areas; and
- the Zone Tax Offset applies only to persons whose principle [sic] place of residence is within a zone.<sup>180</sup>

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<sup>175</sup> *Income Tax Assessment Act 1936* (Cth) s 79A(1).

<sup>176</sup> Australian Taxation Office, *Zone tax offset*, 19 July 2013 <<https://www.ato.gov.au/Individuals/Income-and-deductions/Offsets-you-can-claim/Zones-and-overseas-forces/Zone-tax-offset/?anchor=P1868-116690#P1868-116690>>.

<sup>177</sup> See maps in Appendix B.

<sup>178</sup> Kali Sanyal, ‘Changed eligibility for the Zone Tax Offset’ in Parliament of Australia, *Budget Review 2015-2016 Index* (Research Paper Series 2014-15, May 2015).

<sup>179</sup> Australian Government, above n 8, 104.

<sup>180</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, recommendation 38, 191 [5.123].

This recommendation was followed in the Australian Government's White Paper plan to develop the north which noted that budgetary reforms would ensure that zone tax offsets would only be available for workers '... who genuinely live in specified remote areas'.<sup>181</sup> This targeted tax relief is also aimed at encouraging companies operating in the north who employ transient workers who reside elsewhere to move towards having permanent dwellings in communities near remote work-sites. In practice, the zone tax offset arrangement appears to favour residents living in different geographical regions within the same polity, particularly as there is in practice a third, innominate zone covering mainly the more southern regions of mainland Australia where residents do not receive any government sponsored minimisation of their taxable income. However, such relief is not unconstitutional as the zoned offsets are not preferential tax treatment; rather they are 'financial assistance' which is allowable under the Constitution.<sup>182</sup> Furthermore, because tax offsets reduce the basic level of income subject to liability for taxation, the offset amounts are not deductions.<sup>183</sup> So while China gave preferential tax treatment and government sponsored worker incentives within its SEZs,<sup>184</sup> there is a broad parallel with the Australian tax offset scheme which compensates zone residents for living in remote geographical regions, even though it is not intended to penalise those living outside Zone A or B. The shared kernel between China's SEZs and Northern Australia is that there is some sort of financial reward being bestowed by the government, notwithstanding the different motivational forces for it within each country.<sup>185</sup>

Business operations in the north may be affected by the seasonal wet and dry climate pattern and the cyclical 'boom and bust' experience of many businesses. In response, the Australian Government advocates having a more flexible labour market system

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<sup>181</sup> Australian Government, above n 8, 104.

<sup>182</sup> *Commonwealth of Australia Constitution Act 1900* (Imp) s 96.

<sup>183</sup> Alexander Robert Fullarton, 'Are You Still Here Mr Haase? A Study of Australia's Tax Rebates for Residents in Isolated Areas' (2014) 9 *Journal of the Australasian Tax Teachers Association* 33-4.

<sup>184</sup> Zeng, above n 15, 5.

<sup>185</sup> Fullarton, above n 183, 34.

allowing ‘... businesses to bargain over wages and conditions specific to their business needs, as well as encourage increased investment, more jobs and income growth’.<sup>186</sup> For example, the Northern Territory Government, in cooperation with the Australian Government, wants to streamline recognition of occupational licences for skilled tradespersons issued in other jurisdictions to enable ‘... a seamless transition for workers moving to the Northern Territory ...’.<sup>187</sup> This notion of streamlining skills licensing is akin to China’s reform of *hukou*, although this analogy cannot be overstated as the two requirements are dissimilar in every other way. Another example is the reform of the skills training Remote Jobs and Communities Programme (RJCP)<sup>188</sup> which allows job seekers receiving Australian Government assistance in isolated communities to be employed in local businesses.<sup>189</sup> While the Australian Government’s ‘... first priority is getting ‘job ready’ Australians into work’,<sup>190</sup> the White Paper plan for developing the north recognises that ‘... there are likely to be remaining shortages in some sectors where it is difficult to source Australian labour’.<sup>191</sup> Measures suggested to overcome labour shortfalls include Designated Area Migration Agreements (DAMAs),<sup>192</sup> expanding both the Working

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<sup>186</sup> Australian Government, above n 8, 9.

<sup>187</sup> Ibid.

<sup>188</sup> On 3 June 2015, the Minister for Indigenous Affairs announced that the Remote Jobs and Communities Programme (RJCP), aimed at delivering better opportunities for remote job seekers, would be renamed the Community Development Programme (CDP). The CPD commenced on 1 July 2015. See Australian Government, ‘Reforming the Remote Jobs and Communities Programme’ (Information Sheet, Department of Prime Minister and Cabinet, 23 June 2015) <<https://www.dpmc.gov.au/pmc-indigenousaffairs/publication/reforming-remote-jobs-and-communities-programme-rjcp-information-sheet>>. See also Australian Government, ‘Community Development Programme’ (Regional Information Sheet, Department of Prime Minister and Cabinet, 27 August 2015) <<https://www.dpmc.gov.au/indigenous-affairs/about/jobs-land-and-economyprogramme/remoteworksandcommunities-programme/rjcp/information-and-factsheets>>.

<sup>189</sup> Australian Government, above n 8, 13.

<sup>190</sup> Ibid 106.

<sup>191</sup> Ibid 10.

<sup>192</sup> Where employers in states, territories and regions who are experiencing skills and labour shortages cannot recruit sufficient numbers of Australian workers, the Designated Area Migration Agreement (DAMA) programme allows those employers to sponsor skilled and semi-skilled overseas workers. See Australian

Holiday Maker Visa Programme<sup>193</sup> and the Seasonal Worker Programme,<sup>194</sup> and instituting a worker pilot visa for citizens of the Pacific microstates<sup>195</sup> for work in Northern Australia.<sup>196</sup>

In terms of skill development, China's early SEZ production workers tended to learn on-the-job, under employer-provided training programs. Later, ETDZs and HIDZs attracted highly skilled personnel and focussed upon upmarket research and development opportunities.<sup>197</sup> In Australia, the Government has broadened its Industry Skills Fund<sup>198</sup> so that businesses either currently operating, or seeking to operate, in the north can receive additional funding support. With a focus on promoting indigenous participation, the Industry Skills Fund wants to foster business operations in Northern Australia.<sup>199</sup>

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Government, 'Designated Area Migration Agreements' (Information about requesting and managing a Designated Area Migration Agreement, Department of Immigration and Border Protection, August 2014) <<https://www.border.gov.au/WorkinginAustralia/Documents/dama.pdf>>.

<sup>193</sup> The Working Holiday Maker programme allows adults (aged 18 to 30 years) from eligible partner countries to work while having an extended holiday in Australia. See Australian Government, 'What is the Working Holiday Maker program?' (Department of Immigration and Border Protection, undated) <<https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-is-the-working-holiday-maker-program>>.

<sup>194</sup> The Seasonal Worker Programme offers seasonal labour to employers in the Australian agriculture and accommodation industries who cannot meet their seasonal labour needs with local jobseekers. The offer of seasonal employment is made to workers from participating countries including Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu. See Australian Government, 'Seasonal Worker Programme', (Department of Employment, 4 September 2015) <<https://www.employment.gov.au/seasonal-worker-programme>>.

<sup>195</sup> Nauru, Tuvalu and Kiribati.

<sup>196</sup> Australian Government, above n 8, 10, 13, 14.

<sup>197</sup> Zeng, above n 15, 6; Zeng, above n 16, 38.

<sup>198</sup> The Industry Skills Fund is part of the Australian Government's strategy to boost business productivity and increase competitiveness across the economy. See Australian Government, 'Industry Skills Fund' (Business, undated) <<http://www.business.gov.au/grants-and-assistance/Industry-Skills-Fund/Pages/ISF-Factsheet.aspx>>.

<sup>199</sup> Ibid.

### 5 *Land reform*

Land is at the heart of the SEZ concept. 'Zone' is linked to some physical space. In China's SEZ experience, land reform was linked to the realisation that land had a marketable value.<sup>200</sup> Being able to lease space within SEZs inspired investor confidence that their assets were secure for a fixed term. A spark of similar thinking is in the plan for developing Northern Australia: '[t]he north will never reach its potential without secure, tradeable titles to land and water'.<sup>201</sup> Much of Northern Australia is Crown land,<sup>202</sup> with tenure being freehold,<sup>203</sup> or held under pastoral lease,<sup>204</sup> native title<sup>205</sup> or Indigenous interests.<sup>206</sup> The Australian Government supports reform of the various types of land tenure in the north by reducing the administrative approvals required if a land holder wants to diversify their land use beyond its permitted purpose, for example if a pastoral leaseholder wants to broaden their economic activity away from grazing to horticulture or tourism.<sup>207</sup> A National Water Infrastructure Development Fund will be aimed at building dams and facilitating secure water rights to farmers and investors.<sup>208</sup> The Australian Government's idea of reducing 'red tape' is reminiscent of China's 'one stop shops' in its SEZs.<sup>209</sup> In both cases the prime aim is facilitation of the economic efficiency of land; although for Northern Australia the 'tape-cutting' measure proposed is on a more ubiquitous scale compared to that practised in China's SEZs.

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<sup>200</sup> Shen Xiaofang and Xu Songming, above n 115. For example, the land area occupied by the SEZs in Shenzhen, Zhuhai, Shantou and Xiamen from their inception to 2012 rapidly escalated. See Table 4.

<sup>201</sup> Australian Government, above n 8, 5.

<sup>202</sup> Property of the Australian, State or Territory Government.

<sup>203</sup> Referring to ownership of land.

<sup>204</sup> Land leased primarily for pastoral purposes (eg breeding sheep, cattle or other animals).

<sup>205</sup> A right over traditional land and waters held by Indigenous Australians.

<sup>206</sup> Indigenous Australians hold land rights over significant parts of northern Australia.

<sup>207</sup> Australian Government, above n 8, 5.

<sup>208</sup> *Ibid* 6.

<sup>209</sup> Zeng, above n 15, 5; Zeng, above n 16, 16.

### 6 *Geographic location*

The Chinese Government's decision to locate SEZs along the country's eastern seaboard was partly to maximise routes to export markets.<sup>210</sup> Similarly, the Australian Government's White Paper plan views the north as being in a unique geographical location '... at the intersection of the two great regions of global economic and population growth — Asia and the Tropics'.<sup>211</sup> Estimates are that by 2030 Asia will represent 66 percent of the global middle-class population and 59 percent of middle-class consumption.<sup>212</sup> By 2050, the living standards for some three billion people across Asia are anticipated to be on a par with those enjoyed in Europe today.<sup>213</sup> The 'Tropics', that global geographical belt between the Tropics of Cancer in the north and Capricorn in the south, is estimated to have 50 percent of the world's population by 2052.<sup>214</sup> The Australian Government wants the north to be a 'gateway' for trade in goods and services, security and defence cooperation, and humanitarian assistance and disaster relief.<sup>215</sup> The White Paper's plan for long term growth is to position Northern Australia so that it can capture a market share of the increasing demand across Asia and the Tropics for '... high quality food, reliable energy and minerals supply, global education opportunities and premium travel experiences'.<sup>216</sup> Complementing such integration with the Asia-Pacific region is Australia's growing number of bilateral and multilateral trade agreements.<sup>217</sup>

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<sup>210</sup> Zeng, above n 15, 6.

<sup>211</sup> Australian Government, above n 8, 1.

<sup>212</sup> Mario Pezzini, 'An Emerging Middle Class', *OECD Observer* (online), 2016 <[http://www.oecdobserver.org/news/fullstory.php/aid/3681/An\\_emerging\\_middle\\_class.html](http://www.oecdobserver.org/news/fullstory.php/aid/3681/An_emerging_middle_class.html)>; Homi Kharas, 'The Emerging Middle Class in Developing Countries' (OECD Development Centre Working Paper No 285, 2010).

<sup>213</sup> Australian Government, Australian Trade Commission (Austrade), above n 153, v, 8.

<sup>214</sup> State of the Tropics, *State of the Tropics 2014 report* (James Cook University, 2014) 4.

<sup>215</sup> Australian Government, above n 8, 2.

<sup>216</sup> Australian Government, Australian Trade Commission (Austrade), above n 153, v.

<sup>217</sup> For example, Australia has Free Trade Agreements (FTAs) with China (which came into force, December 2015), Japan (January 2015), Korea (December 2014) and the Trans-Pacific Partnership countries (signed February 2016 but yet not entered into force). Australia also has FTAs with Singapore (2003), Thailand (2005), Malaysia (2012) and the Association of Southeast Asian



Turning to the weaknesses within China's SEZ experience, the White Paper plan to develop Northern Australia seeks to avoid similar consequences:

*1 Environmental protection*

The environmental cost of China's rapid industrialisation includes air, water and soil pollution, desertification and erosion, and habitat and biodiversity loss.<sup>218</sup> As China now contemplates how to deal with its consequential environmental degradation,<sup>219</sup> the Australian Government's White Paper plan declares that development '... will need to be consistent with safeguarding the incredible northern environment for future generations'.<sup>220</sup> The White Paper continues, '[i]t is particularly important to understand our role as stewards of our unique natural wonders, such as the Great Barrier Reef, ensuring all development is done in a way that protects the outstanding universal value of such special places'.<sup>221</sup>

Contemporaneously, in order '[t]o unlock the north's full potential ...' <sup>222</sup> the Australian Government plans to make it easier to 'use' natural assets, in close collaboration with Indigenous communities.<sup>223</sup> For example, the White Paper plan proposes to cut red tape concerning fisheries and aquaculture industries regulation, tourist souvenirs and exports of low risk species, such as kangaroo and emu products.<sup>224</sup> 'The Northern Australia crocodile industry and other low risk commercial and tourism traders covered by the Convention on International Trade in Endangered Species of Wild

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Nations (ASEAN) (2014). See *ibid* v, 21. See also Australian Government, Department of Foreign Affairs and Trade, *Free Trade Agreements* <<http://dfat.gov.au/trade/agreements/Pages/trade-agreements.aspx>>.

<sup>218</sup> Tom Levitt, above n 121.

<sup>219</sup> *Ibid*.

<sup>220</sup> Australian Government, above n 8, 4.

<sup>221</sup> *Ibid*.

<sup>222</sup> *Ibid* 5.

<sup>223</sup> *Ibid*.

<sup>224</sup> *Ibid* 7, 12, 82, 128.

Fauna and Flora (CITES)<sup>225</sup> will face less red tape'.<sup>226</sup> Whether this less stringent regulatory approach impacts upon the north's unique environment remains to be seen.<sup>227</sup>

## 2 *Inadequate provision of social services*

China's inadequate provision of social and urban services in some SEZs was born out of its developing country status. For example, health, education and transportation services in some SEZs often lagged behind their economic success.<sup>228</sup> Northern Australia's lack of adequate provision of social services is a result of having a sparse population spread thinly across a relatively remote geographical region. The Committee had noted that there was an absence of 'social infrastructure' in the north in terms of '... those institutions and facilities contributing to personal wellbeing and lifestyle, such as health, education, sport and culture'.<sup>229</sup> The White Paper plan addresses specific issues, such as education and health.<sup>230</sup> However, it views the more profound issue of personal wellbeing and lifestyle through the prism of work: '[p]eople with jobs are ... socially rewarded through the enjoyment and fulfilment derived from work,

<sup>225</sup> The *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) is an international voluntary agreement between governments aimed at ensuring that international trade in specimens of wild animals and plants do not threaten their survival. Australia ratified CITES in July 1976 and Australian CITES legislation is now part of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). See CITES, *What is CITES?* <<https://www.cites.org/eng/disc/what.php>>; *CITES World* (Official Newsletter of the Parties, Issue No 15, July 2005) 15 <<https://cites.org/eng/news/world/15.pdf>>.

<sup>226</sup> Australian Government, above n 8, 7.

<sup>227</sup> Coincidentally, on 24 April 2014, the Standing Committee of the NPC adopted the Revision of China's 1989 *Environmental Protection Law* (the China EPL), which became effective on 1 January 2015. The updated China EPL includes tougher consequences for violating China's environmental laws, expands the scope of projects subjected to environmental impact assessment statements, and allows nongovernmental bodies to issue legal proceedings against polluters on behalf of the public interest. See Robert L Falk and Jasmine Wee, *China's New Environmental Protection Law: Implications for Overseas Investors, Joint Ventures and Trading Partners* (Morrison Foerster, 30 September 2014).

<sup>228</sup> Zeng, above n 16, 41.

<sup>229</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, 120 [4.46].

<sup>230</sup> Australian Government, above n 8, 136.

improved health outcomes, social connectedness and mental wellbeing'.<sup>231</sup> The plan's emphasis is upon '... getting 'job ready' Australians into the work they value'<sup>232</sup> and having a '... workforce with the right skills'<sup>233</sup> for Northern Australia.

### *3 Rush to imitate northern development and a spill-over effect*

In China, the anticipated spill-over effect of benefits derived from within SEZs, the cradles of capitalism, into China's greater planned economy beyond has not been homogeneous. The comparatively better living standard enjoyed by citizens in major cities along China's east coast is yet to be disseminated completely to those who live further west.<sup>234</sup> Conversely, the White Paper's plan for developing the north is underpinned by measures '... which are national in scope while being of particular significance in the north'.<sup>235</sup> Whereas China viewed SEZs as the vanguard of capitalism, the Australian Government sees the north lagging behind the rest of country. So far, Australia does not have the benefit of hindsight as to whether the proposed Government - private enterprise partnership for developing the north will elicit pressure for similar ventures in the rest of the country.

## V CONCLUSION

While not declaring the north an SEZ, the White Paper plan made no mention of the Committee's notion of the limited use of SEZs. Drawing upon China's SEZ experience, particularly its strengths and weaknesses, our paper has speculated that traces of what might have been embodied within that limited use notion are discernible within the Australian Government's plan for developing the north. Just as the Chinese Government implemented measures in the hope of facilitating the development of its SEZs, so the Australian

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<sup>231</sup> Ibid 106.

<sup>232</sup> Ibid 102.

<sup>233</sup> Ibid 2.

<sup>234</sup> Zeng, above n 16, 36.

<sup>235</sup> Australian Government, above n 8, 60.

Government's vision for developing the north is intended to '... set the right environment for businesses to profitably invest and communities to flourish'.<sup>236</sup> Many of the ideas behind creating this 'right environment' are comparable to those in China's SEZ development. So, although the Australian Government's plan is intended to be '... the first, and last, White Paper for the north',<sup>237</sup> by implication, from China's experience, the Committee's recommendation of a '... full investigation of the potentiality and practicality'<sup>238</sup> of the limited use of SEZs may remain a future possibility.

### Appendix A<sup>239</sup>

Table 1: Amount of foreign capital actually utilised in China's earliest SEZs

SEZ	Year	Amount of foreign capital actually utilised (measured in USD \$100 million)	Amount of increase (USD \$100 million) over the period of years shown
Shenzhen	1980	2.7122	
	2012	62.6184	59.9062
Zhuhai	1980	0.1575	
	2012	14.6189	14.4614
Shantou	1980	0.0161	
	2012	1.3051	1.289
Xiamen	1983	0.0794	
	2012	17.75	17.6706
Hainan	1988	1.14	
	2012	16.4119	15.2719

<sup>236</sup> Ibid iv.

<sup>237</sup> Ibid 1.

<sup>238</sup> Parliamentary Joint Select Committee on Northern Australia, above n 3, recommendation 5, 170 [5.27].

<sup>239</sup> The data shown in Tables 1, 2, 3 and 4 was compiled from the following sources: the *Statistical Yearbook of Shenzhen* <<http://www.sztj.gov.cn/nj2013/indexce.htm>>; *Statistical Yearbook of Zhuhai*, <[http://www.stats-zh.gov.cn/tjsj/tjnj/201412/t20141219\\_192208.htm](http://www.stats-zh.gov.cn/tjsj/tjnj/201412/t20141219_192208.htm)>; *Statistical Yearbook of Shantou* <[http://stj.shantou.gov.cn/tjsj/tjnj2013/1/\\_htm](http://stj.shantou.gov.cn/tjsj/tjnj2013/1/_htm)>; *Statistical Yearbook of Xiamen* <<http://www.stats-xm.gov.cn/2013/main0.htm>>; *Statistical Yearbook of Hainan* <[http://www.stats.hainan.gov.cn/tjsj/tjsu/nds/n/201308/t20130819\\_1053439.html](http://www.stats.hainan.gov.cn/tjsj/tjsu/nds/n/201308/t20130819_1053439.html)>; and He Yiying, Xiamen's Demographic Transition and Economic Growth in the Special Economic Zone, *Journal of the Party School of CPC Xiamen Municipal Committee*, (No 6, 2011 (General No 122)) 36-42.

Table 2: Gross Domestic Product (GDP) increases in China's earliest SEZs

SEZ	Year	Amount of GDP (100 million CNY yuan)	Amount of growth in GDP over the period of years shown
Shenzhen	1980	2.7012	
	2012	12950.060	12947.359
Zhuhai	1980	2.6128	
	2012	1503.7642	1501.1514
Shantou	1980	10.79	
	2012	1425.01	1414.22
Xiamen	1983	6.4002	
	2012	2815.17	2808.7698
Hainan	1987	57.28	
	2012	2855.5	2798.22

Table 3: Year-end permanent population increases in China's earliest SEZs

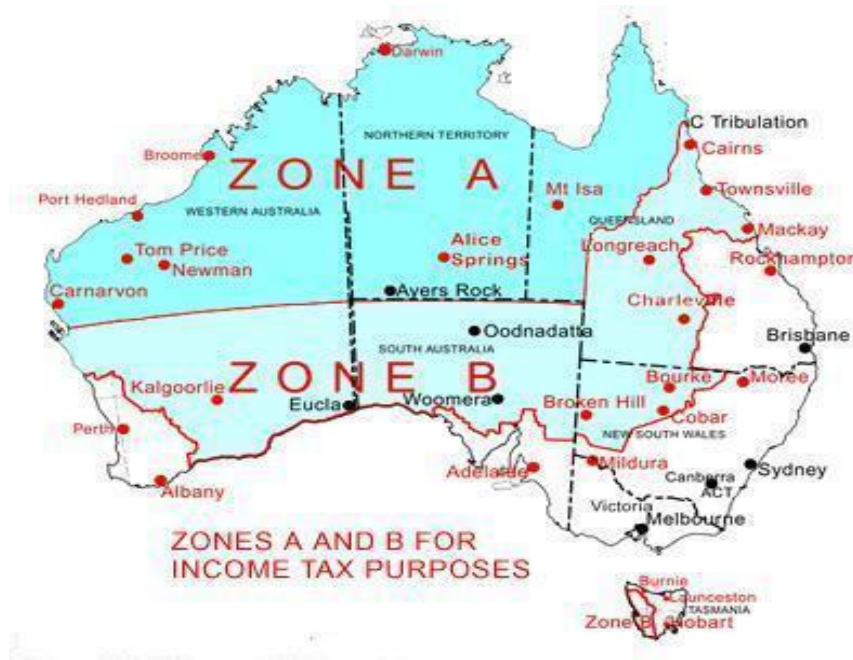
SEZ	Year	Year-end permanent population (10,000 persons)	Amount of growth in year-end permanent population over the period of years shown
Shenzhen	1980	33.29	
	2012	1054.74	1021.45
Zhuhai	1980	36.5324	
	2012	158.2620	121.7296
Shantou	1980	29.734	
	2012	532.88	503.146
Xiamen	1983	93.3927	
	2012	367	273.6073
Hainan	1982	566.77	
	2012	886.55	319.78

Table 4: Amount of land area of China’s earliest SEZs (in square kilometres)

SEZ	Year	Amount of land area (square kilometres)	Amount of increase of land area over the period of years shown
Shenzhen	1980	327.5	
	2012	1996.85	1669.35
Zhuhai	1980	6.7	
	2012	1724.32	1717.62
Shantou	1980	1.67	
	2012	2064.42	2062.75
Xiamen	1983	2.5	
	2012	1573.16	1570.66
Hainan	1988	35354	
	2012	35354	0

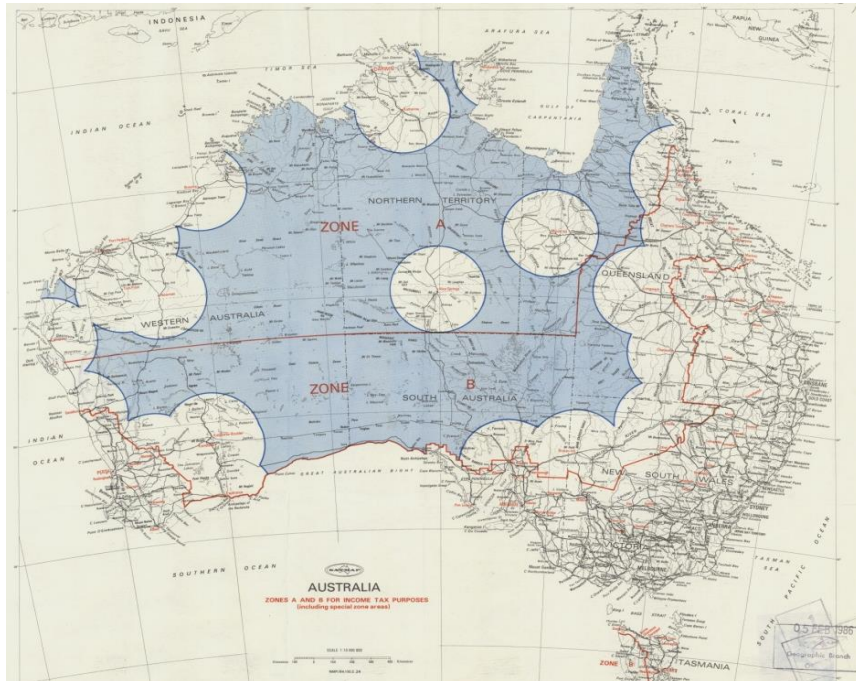
**Appendix B**

Map 1: Australian tax rebate zones in 1945<sup>240</sup>



<sup>240</sup> NATMAP NMP/84/002.24 as reproduced in Tanya Ross Jones, *Pilbara Dialogue Fly-in-fly-out workforces: FIFO and remote area tax considerations* (Ernst & Young April 2012) <[www.pdc.wa.gov.au/index.php/download\\_file/view/339/](http://www.pdc.wa.gov.au/index.php/download_file/view/339/)>. See also Fullarton, above n 183, 29.

Map 2: Australian tax rebate zones in 1981<sup>241</sup>



<sup>241</sup> NATMAP G 8961.E74 as reproduced in Fullarton, above n 183, 30.