

**A QUALITY MANAGEMENT AND SUSTAINABLE DEVELOPMENT
APPROACH TO DISCUSSION AND RECOMMENDATIONS IN THE
PRODUCTIVITY COMMISSION DRAFT REPORT OF THE REVIEW OF
AUSTRALIA'S CONSUMER POLICY FRAMEWORK (2007)**

**URGENTLY IMPLEMENT DRAFT RECOMMENDATIONS 5.1 AND 5.3 WHICH
SEEK INDUSTRY-SPECIFIC CONSUMER REGULATION AND LET COAG
AND INDUSTRY LEAD AN EDUCATION REVOLUTION IN THIS LIGHT**

The Productivity Commission draft report of the Review of Australia's Consumer Policy Framework generally appears informative, clear, logically argued and to have many excellent recommendations. However, some problems relating to its need to attain quality management and sustainable development perspectives, including in recommendation 5.1, are dealt with later. Later headings also relate to other specified draft recommendations.

In general, recommendation 5.1 calls for the Council of Australian Governments (COAG) to instigate and oversee a review and reform program for industry-specific consumer regulation. Recommendation 5.3 calls for a single consumer protection regime for energy services to be developed and implemented under the auspices of the Ministerial Council on Energy. In the light of the Commonwealth government election promises for COAG to implement deregulation and sustainable development, I think recommendations 5.1 and 5.3 should generally be adopted first and fast. Such a COAG process would also provide the most obvious method for consultation and related necessary investigation and report on many other issues. One hopefully assumes that COAG will perform better than the last Ministerial Council on Consumer Affairs (MCCA). Assist it by openly racing education! Quality can only be judged where there is openness. I offer open education in this context.

I assume that consumer protection issues must first be conceptualised as risks arising from the production process. The same production process may also produce related risks for employers, workers, communities, natural environments (air, land, water), investors and taxpayers. If production and related environment development are to be globally sustainable, which I assume is our goal, all Australian stakeholders must concentrate on establishing management and data gathering systems which are as rationally coordinated as possible, from the workplace, industry and related community and environment perspectives. Such broadly coordinated and scientific approaches are necessary for triple bottom line accounting (financial, social and environmental). Without this all employers and almost everybody else will increasingly face chaos, where lawyers and bureaucrats prosper. I address the Productivity Commission report and recommendations from this perspective. Attachments contain supporting discussion towards sustainable development.

However, also note that recommendation 5.1 is badly undermined by the related call for 'a particular focus on requirements that only apply in one or two jurisdictions'. This focus on gaining agreement through appeals to majority state rule, rather than to the establishment of a generally more rational and consistent approach to achieve the goals of sustainable development and triple bottom line accounting, is disturbing. It is analogous to the behaviour of universities which proceeded in 2006 to reduce post graduate courses by

cutting out all those with fewer than five students enrolled, which was a lot. This is an anti-intellectual approach which may mean the most entrenched, numerous and expensive disciplinary and collegiate interests are met while new ideas, perhaps more congenial to sustainable development perspectives, are eliminated before they have even gained an institutional toehold. (As a person whose risk management subjects were removed by my former employer, Sydney University, in 2006, I well know the problem of which I speak.)

On the other hand, in 1990 the COAG began review of legislation to develop national standards for health and environment protection, including related occupations and training, disability services, social security benefits and labour market programs (Premiers and Chief Ministers 1991). One is therefore somewhat shocked at Table 5.1 entitled 'Occupations licensed in only one or two jurisdictions' because it shows that Mutual Recognition Legislation which occurred soon after 1990 was apparently not implemented. I recommend reviewing all occupational licensing urgently, in the light of the need to design better coordinated skills development, education and dispute resolution systems, as discussed later, and in attachments. Lead a sustainable development education revolution!

INJURY DATA SYSTEMS MUST SUPPORT SUSTAINABLE DEVELOPMENT SO BROADEN AND IMPLEMENT DRAFT RECOMMENDATION 8.2. ALSO CONSIDER AUZSHARE AND OTHER KEY DATABASE APPROACHES TO INJURY IN THIS CONTEXT (SEE RECOMMENDATION 9)

Recommendation 8.2 calls for the Australian Government to commission a study to assess product-related injuries, to develop a hazard identification system for consumer product incidents, and related matters. Why are injuries which arise from services, as well as products, not considered in the same industry based context? This seems remiss to me. The AUZSHARE database of serious complaints and cases also seems appropriately considered in this context. (The AUZSHARE database which is addressed in Recommendation 9 was new to me. I Googled it but found little information.)

There is an increasingly urgent need to treat injury to consumers in a way which makes injury data definition, classification and collection an effective management tool in order:

1. to give better remedies to consumers of an apparently injurious product or service
2. to assist prevention of similar injury to others, and
3. to gain more generally effective data collection and quality management to attain sustainable development and triple bottom line accounting (financial, social and environmental) in all environments, communities, industries and organizations

However, many professionals and academics ignore Australian Bureau of Statistics classification systems such as the Australian Standard Industrial Classifications (ASIC) and the Australian Standard Classification of Occupations (ASCO), which also shocks me.

In the light of the recent Commonwealth election and new policy platform for sustainable development, deregulation, and an education revolution, I assume that many employers and others are now more concerned than ever before about the need to obtain more

consistent and high quality production outcomes which do not injure consumers and assist production, in order to make the life and future generations of all species more sustainable. Success depends vitally on risk management systems which are effectively coordinated to assist general achievement of sustainable development and triple bottom line accounting.

In December 2007 the newly elected Prime Minister signed the Kyoto Protocol, with the aim of reducing the environmental effects of greenhouse gases which originally arise from various forms of production. However, the earlier draft regulation impact statement for draft legislation to introduce the National Greenhouse and Energy Reporting Bill (2007) stated:

Users of data are rarely in a position to compare different companies' emissions or emissions-reduction performance because of inconsistency of data formats, legitimate doubts about consistency of method and quality and the lack of sufficient disaggregation of reported results to allow users to check at least some of the assumptions (2007, p.16)

Too many narrowly bureaucratic and professional cooks are spoiling the national broth.

For example, the recent NSW Department of Planning discussion paper, 'Improving the NSW Planning System' (2007), provides recommendations supposedly to address the government problems of 'overlapping levels of control and need for clearer accountability for plan making'. Its recommended cure seems likely to be worse than the problem, because it fails to effectively address the apparent lack of a rational classification system for anybody to group and treat land planning and/or development proposals, the large majority of which are very small. The Australian Greenhouse Office has a view of risk management which seems entirely at odds with that required under state occupational health and safety (OHS) Acts and perhaps with the views of the Climate Change Group in the Department of Prime Minister and Cabinet. (They never phone. They never write.) Commentaries on the National Greenhouse and Energy Reporting Bill (2007), ignore state OHS acts even though the design and competitive administration of such industry and government owned injury prevention and rehabilitation funds provide many good lessons about how to coordinate and address all risk and fund management better. From my perspective, if policy makers cannot grasp the vital importance of state OHS acts and national health insurance as vital theoretical constructs for obtaining sustainable development, we will forever be drawn back to a stupid feudal past. Recent events present the necessity for an open education revolution, which is also a major business opportunity.

Defining and applying key data concepts logically and consistently is vital for the practical development and management of any production, data gathering, research and budgeting to assist industries, communities and governments to achieve common goals. Clear, logical, consistent and correctly applied definitions are first necessary for good classification and all related data collection and research to meet specified management and community aims. Such definitions are normally found in dictionaries. These were invented during the European Enlightenment and presented a new, exciting logic of widely shared meaning and related potential classification systems, which were also necessary for the development of scientific management and research in engineering, biology and other

disciplines. National medical diagnosis and treatment systems provide good current examples. However, many academics also try to make their mark by inventing new words, which they may ignorantly assume are ideal not only for their own specialised activities, but also for a related group of supposedly expert brethren who normally service or legally impose on others. An even worse problem is that the lawyers' ancient feudal monopoly continues to dominate all Australians, through the courts and an authoritarian, pre-scientific discourse which relies on judicial 'interpretations' - not definitions. Lawyers have the power to make large amounts of money by enhancing consumer confusion, and also claiming to be the only group able to resolve it. Their words and ideas are terrible. (See attached submission to the Australian Law Reform Commission on legal privilege.)

Sustainable development goals and requirements ideally send shock waves through established professional disciplines, including law, economics and financial management because they are ideally not extras added on to laws and processes, where the legal word is king. The legal approach produces even more dysfunctional red tape, without meeting the aims of sustainability. Attaining sustainable development requires clear project aims, supported by project implementation systems which allow comparison of project activities and outcomes. This necessitates rethinking of a wide range of risk management processes which are normally driven from within legal, professional or related academic paradigms and silos. In this problematic professional context, I have repeatedly pointed out the rationality and importance of state OHS acts and Commonwealth health promotion conceptual frameworks to many Commonwealth, state government and other inquiries, which appear to have ignored the existence of such health related systems, let alone their relevance for discussion of all sustainable development, through better injury management. Refusal to question and reform legal, professional and bureaucratic classes can lead to situations where supposed reform is actually a case of the introduction of more bureaucracy, confusion, delay and cost. Only an open education revolution can fix this?

DEFINE 'GOOD FAITH' AS BEING CONSISTENT WITH TRYING TO ACT HONESTLY IN THE PUBLIC AND RELATED INDIVIDUAL INTEREST (SEE RECOMMENDATION 3.1 AND ALSO 7.1 ON UNFAIR CONTRACTS)

Draft recommendation 3.1 sensibly refers to the need for Australian Governments to adopt a common overarching objective for consumer policy. Legislation should always commence with overall aims, so that the outcomes of its administration can be measured effectively, to estimate the extent to which the aims of this legislation and all related organizational, regional, national and industry aims were or were not achieved. The objectives proposed by the Productivity Commission in 3.1 seem generally good and also refer to the need to 'trade fairly and in good faith'. Lawyers may argue interminably about the meaning of 'good faith' (p. 127). Ideally, a clear definition should be provided in legislation which links the concept of 'good faith' to the more common, scientific and democratic concepts of 'honesty and the public interest', which includes the individual interest. I guess the English term 'in good faith' originally had a Christian connotation, in that a person acting in this fashion was also assumed to be acting in a Christian and therefore properly moral manner. In a contemporary, multicultural, multi-faith country such as Australia, which ideally seeks to be democratic and to advance scientifically, the

term 'in good faith' is more popularly and usefully used to mean 'acting honestly and in the related public and individual interest'. I find the use of the term, 'in good faith' to be excellent, as long as it is clearly defined and linked to this modern usage context. It can then logically link those community members who are guided by their Gods, with others who have none. This seems an ideal situation as it covers the ideal morality of everybody.

What is the meaning of the 'safe harbour' referred to in a subsection of draft Recommendation 7.1? (p.128) If the special meaning of terms is known only to a few, (whether they are lawyers, mathematicians or other professional groups) then this is likely to cement related monopolistic, expensive, professional control over the rest of us and we in turn are likely to remain comparatively subservient, ignorant and potentially defrauded. I reject draft recommendation 10.2 for similar reasons. 'Injunctive relief' and 'substantive proceedings' require clear explanation, especially in the light of problems outlined later.

The above discussion is not to deny that new words must often be invented to reflect the community growth in expert knowledge. However, problems arise when specialist groups seek mainly to enhance their career status through adding mystery, by inventing many new words as little wheels, in chosen ignorance of other expert groups, let alone broader, plain English approaches to dealing with similar issues. Universities may then continue to promote diverse professional elites but systemic dysfunction, at the expense of a comparatively cowed and ignorant public. Plain English and broad education are necessary to deal with this problem. The alternative madness is already reflected in Australian legal, bureaucratic and academic behaviour, and its associated, growing burden of red tape. Tied in it, one may never find out the common conceptual simplicity which underlies many self serving silos. (There are none so blind as those who won't look?)

WHERE DID THE APPARENTLY DYSFUNCTIONAL FIGURES COME FROM?

Recommendation 4.3 calls for 'responsibility for enforcing' the consumer product safety provisions of new national generic consumer law to be transferred to the Australian Government and undertaken by the Australian Competition and Consumer Commission (ACCC). Why is the safety of services ignored? What does 'enforcing' actually mean and where does it start? Answering such questions is vital for the establishment of clear injury definitions, classifications and all related processes and data gathering for scientific and quality management. The courts ignore such data issues, as Australian governments and independent reports on injury and insurance systems have consistently indicated over the past two decades. Unlike health practitioners, courts do not classify apparent forms of injury, claimant types and related environments in order to individually treat and inquire into the individual outcomes of treatment better, and in order to promote generally better treatment of injury, injury prevention, and cost containment for all community group members, for diverse groups and for future individuals. They prefer their legal privileges.

Studying the figures in the Productivity Commission review of Australia's Consumer Policy Framework is a disturbing experience in this context. Do those who produced these figures understand the basic quality and risk management requirements necessary for all sustainable development? (I think not.) The issue of the appropriate definitions of

'enforcement', 'redress' and related terms first arise as a result of studying Figure 3.1 entitled 'Identifying and evaluating policy instruments'(p. 45). This diagram is also entitled Figure 3, 'A policy decision-making tree' in the additional Summary of the report (p.15). I find it incomprehensible. Who is supposed to be applying figure 3.1 or 3? Only COAG? (p.74) How and why? (No worries, they'll just ask the Labor lawyers?)

Figure 3.1 is preceded by Figure 1 entitled 'Many policies affect consumer wellbeing' (p.5), which apparently depicts an ice berg with words written on and around it for reasons I can only guess at. Figure 2 (only in the separate Summary, p.8), supposedly shows 'The Consumer Policy Framework'. In this figure I cannot understand how 'firms, markets and consumers' are supposed to relate to the 'policy development; policy framework; enforcement and redress' parts of the diagram. Can one only have 'redress' after 'enforcement', as the figure appears to suggest? That seems likely to be expensive? How are both these terms defined? On page 150 of the full report we are told 'Redress is mostly instigated by a complaint from a consumer'. However, under the title 'Redress', the report Summary states, 'consumers are sometimes confused about where to seek help and information on complaints is not always effectively used by regulators'(p.60). This seems highly likely, but does the statement also appear to assume a different concept of 'redress' from Figure 2 (p. 8)? This is a big mess to me and others are confused as well. It also makes it difficult to gauge any future costs, as required by recommendations. By simplifying bad systems, however, one may more obviously cut highly unnecessary costs.

In a related context also note that Figure 14.1 entitled 'The Impact of policy reform' (p. 271) should be entitled 'The **proposed** impact of policy reform' since it apparently depicts a whole lot of outcomes which relate from a new, supposedly ideal injury treatment situation, which is not properly explained and not depicted. (If one inadvertently set up a stupid injury treatment system the 'impact (outcome) of policy reform' would look very different from this diagram. This is not a trivial issue as clear understanding of policy impact or outcome is vital for quality management, including all project management and related triple bottom line accounting. One may have an **expected project outcome (an hypothesis?)** and an **actual project outcome**. However, to forget the concepts 'expected' and 'actual' in discussions of management outcome is unfortunately common.

For example, the pocket Collins dictionary I recently consulted did not contain the word 'outcome', which surprised me. I first Googled the Cambridge dictionary, which stated that an 'outcome' is – a result or effect of an action or situation'. It gave the usage example, 'It's too early to predict the outcome of the meeting'. The Webster Dictionary stated that an 'outcome' is 'something that results' or 'a phenomenon that follows and is caused by a previous phenomenon'. I agree. On the other hand, the MSN Encarta dictionary defined 'outcome' as either a result OR a prospect, as outlined below:

Result: the way that something turns out in the end (a satisfactory outcome)

Prospect: An expected or final state, achievement or result (poorer health outcomes)

My guess is that this bizarrely confusing view, that an outcome may be defined as something that happened in the past AND as something that may happen in the future, or

as something comparatively objective AND as something highly speculative, is a product of the American marketplace and related research strategies. In my experience, Americans often support questionnaire based research of a kind which wilfully confuses apparent perception with reality. Put crudely, from this perspective, if enough people believe a bridge is safe, this may be taken to be the case, and called scientific. For the purposes of this common kind of research, the civil engineering expert is merely one of many equally valuable questionnaire respondents. The psychologist or allied health practitioner is often in charge. Please note that this is NOT the Australian government health approach, as indicated in the National Goals, Targets and Strategies for Better Health Outcomes (1994). Nevertheless, one is constantly fighting excessive US relativism in Australian universities, and it seems to have been adopted in at least some children's services and also by the Commonwealth Department of Finance and Administration in its 'Outcomes and Outputs Framework Guidance Document'. In my view the departmental position is wrong and dangerous. Such management matters need to be sorted out for clear, transparent program and project administration prior to development of emissions trading and all earlier approaches to sustainable development. Is Fig. 14.1 worse than having nothing?

Table 8.1 entitled 'Comparison of jurisdictional application of civil liability reforms' (p.139) is only useful, in my opinion, if considered in the light of ideal injury classification, treatment, rehabilitation, injury prevention and related justice aims for sustainable development. Figure E4 entitled 'The financial services regulation framework' (p. 191) is largely a mystery to me. It is vital to put the contents into a clearer written form so they can be properly understood. This is exactly the thing we now want to know!

All the above figures appear unhelpful to good injury classification, treatment, and related consumer policy. Their meaning and applicability is lost on me. When I was younger, I usually thought I was too stupid to understand figures such as those just discussed. Today, I more often think that such figures are often produced by people who cannot adequately conceptualise or express themselves in writing, so hope their diagrams will do instead. I guess that all the diagrams I now refer to were drawn by different people from those who wrote this generally very clear report, and would love to know whether I am correct in this surmise. The figures seem too poor for the Productivity Commission. Did others do them?

In the light of the past, apparently glacial performance of the Ministerial Council on Consumer Affairs, I can see the logic of the Productivity Commission's recommendation 4.3 that responsibility for enforcing the consumer product safety provisions of the new national general consumer law in all jurisdictions should be transferred to the Australian Government and undertaken by the ACCC. However, I regard it as ludicrous to have competition policy presided over by a monopoly profession with its roots in a dysfunctional, prescientific, discourse. I also note Recommendation 4.4, in the same context, because it seeks arrangements to ensure that the ACCC is sufficiently resourced to assume the enforcement functions performed by State and Territory Fair Trading Offices in regard to their generic laws. How can lawyers ever be resourced enough? Where is the assisting data to make the computations? Any institution that takes a pre-scientific approach to problems should now be logically condemned, in my opinion.

Lawyers are trained to deny or control scientific approaches, not to use them. Feudal, adversarial practices and monopoly legal systems are neither competitive nor scientific. God knows why the ACCC was ever set up to support the Hilmer Report. In his independent report on National Competition Policy, he wrote:

Competition policy is not about the pursuit of competition per se. Rather it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives. These accommodations are reflected in the content and breadth of application of pro-competitive policies, as well as the sanctioning of anti-competitive arrangements on public benefit grounds (1993, p. xvi).

This is recognition that the role of government is to intervene in the market to facilitate more effective competition or to attain other social objectives considered to be in the public interest. This is also a good approach for triple bottom line accounting. Hilmer stated that the Commonwealth, State and Territory governments had earlier agreed on the need to develop a national competition policy giving effect to the following principles:

- (a) No participant in the market should be able to engage in anti-competitive conduct against the public interest
- (b) As far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of the form of business ownership
- (c) Conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review to demonstrate the nature and incidence of the public costs and benefits claimed
- (d) Any changes in the coverage or nature of competition policy should be consistent with, and support, the general thrust of reforms

Such guidelines appear good for direct implementation, however they may have been destroyed by feudal legal monopoly in the interim. The ACCC is a blunt instrument.

**SUPPORT RECOMMENDATION 9.6 FOR CONSUMER ADVOCACY
URGENTLY THROUGH COMMUNITY AND INDUSTRY PARTNERSHIPS FOR
AN EDUCATION REVOLUTION FOR SUSTAINABLE DEVELOPMENT**

Draft recommendation 9.6, which states that there should be enhanced support for individual consumer advocacy through increased resourcing of legal aid and financial counselling services, especially for vulnerable and disadvantaged consumers is subject to all the concerns that I discuss above. An education revolution is now a vital necessity.

Consumers are no different from anybody else or any other species, in that their injury may precede their disability or death. There is also greater public understanding than ever before about the need for consistent regional approaches and for mature markets to combat environment degradation and biodiversity loss. However, there appears to be bureaucratic and professional confusion, leading to a potential explosion of related cost. UN definitions and Australian Bureau of Statistics industry and occupational classifications may be a very obvious but neglected professional help in this context. We are far from alone in such problems. In July 2007, I attended a United Nations Conference entitled 'Reinventing Government' at which an apparently lonely economist and politician from Pakistan pointed out that every management context has a geographical, historical, political, cultural and economic context in which major sources of power may not be mentioned, because of the sensitive awareness of their influence upon potential careers, which are usually of paramount importance. To the extent that these broader environmental contexts are ignored, professional jargon and responses, supported by classifications and related computations which may be dubious, may fraudulently pose as scientific management or research, which is seldom questioned. An education revolution is needed to combat this.

The first principle of the Rio Declaration on Environment, which was agreed by United Nations (UN) members in 1992, states that human beings are at the centre of concern for sustainable development and are entitled to a healthy and productive life in harmony with nature. Competition and an informed market are vitally necessary to assist fund managers and others to produce the desired, triple bottom line results. Perfect competition depends on perfect information. Judging the quality of tertiary curriculum without knowing its contents is accepted but very facile. Why are tertiary institutions scared to open it up?

In 1994, for community rehabilitation purposes, the International Labour organization, the UN Educational Scientific and Cultural Organization and the World Health Organization defined a community as:

1. a group of people with common interests who interact with each other on a regular basis; and/or
2. a geographical, social or government administrative unit

Work provides people with many economic and related securities, but also creates risks for workers, consumers, communities, environments, employers, investors and taxpayers. The sources of risks to water, air, land and biodiversity often arise first through work. If many inconsistent approaches to risk management arise, as currently appears to be the case, and these are also driven by professional elites, people will find red tape worse than ever before, making business unsustainable. The answer to this rapidly increasing problem is national, open education revolution. I offer curriculum content in this context.

By collecting curriculum products to meet sustainable development needs and identified skills shortages, industries could also encourage governments, universities, technical and further education institutes and other education providers to adopt coordinated approaches to support sustainable development and triple bottom line accounting. Risk management

education is at the centre of national skills development requirements. The internet, computers, TV and videos provide the most amazing potential for fast and effective skills development since books escaped monasteries and priestly guardians. The 20th century technologies mean a massive reduction in the need for constantly re-inventing the wheel, as is normally done by teachers talking in classrooms which are often far away, and to which students drag themselves, often at high cost and inconveniently. I recommend fast development of education packages for soldiers, police, health workers and teachers, because they appear ideally as the regional and local community embodiment and model of good public administration for human protection, continuing education and record keeping. I urge COAG and industry to support this view and those in related attachments.

Thank you for the opportunity to make this submission.

Yours truly

Carol O'Donnell, 10/11 Rosebank Street, Glebe, Sydney, Australia 2037.