

## **SUBMISSION TO PRODUCTIVITY COMMISSION (PC) INQUIRY INTO GOVERNMENT DROUGHT SUPPORT AND PC REVIEW OF REGULATORY BURDEN ON THE UPSTREAM PETROLEUM (OIL AND GAS) SECTOR**

### **Overview**

This submission refers to two July 2008 issues papers produced respectively by the Productivity Commission (PC) Inquiry into Government Drought Support and the PC Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector. The current submission addresses both inquiries' questions below from a risk management perspective designed to achieve coordinated, sustainable development across Australian primary industries, which usually depend primarily upon the availability and quality of land and water for their operations. This follows earlier submissions I made with similar sustainable development aims. These submissions were also produced in the light of the goals of greenhouse gas reduction through trading and investment in cleaner production and related environment rehabilitation and degradation prevention methods. Most recent PC papers on the primary sector are treated together to advance more effectively targeted and joined up government, with related management efficiencies. Australians need to understand its old fashioned regulatory flaws and cut them out. The nation is otherwise condemned to drive forward with one foot on the brake and the other on the accelerator.

In the above context, I particularly disagree with the Department of Resources, Energy and Tourism (DRET) consolidation and streamlining of single-purpose regulations that are subordinate to the Offshore Petroleum Act (OPA) into three areas – resource management, safety and environmental protection (PC 2008, p. 9). I think the Department supports the discussion of regulation outlined by the PC, which is also very unhelpful for sustainable development. The PC distinguishes between economic and social regulations. It states economic regulations supposedly intervene directly in market decisions such as 'pricing, competition, market entry or exit'. Social regulations supposedly protect public interests such as 'health, safety, the environment and social cohesion.' (PC 2008, p.5). The later PC discussion entitled 'Some potential sources of unnecessary regulatory burden' (2008, p.18) demonstrates the key problems arising from the conceptual model on page 5, which the PC nevertheless seems consistently to have adopted. Former Treasurer, Peter Costello, asked for a better perspective than this when he called for an inquiry into telecommunications in 2000 but the PC ignored him, just like Hilmer's views on competition were largely ignored in translation to the Trade Practices Act. Why did this happen? (See discussion below and attached for related information.)

**Q. Should governments have structural adjustment policies which are triggered by severe drought? (PC 2008, p.13) A. No. Take a risk management approach.**

From a risk management and insurance perspective designed to achieve sustainable development, severe droughts *should not* be categorized as exceptional circumstances. As the PC points out, having drought assistance triggered by severe drought may mean *'that there is the potential for the most likely recipients of assistance to be less prepared farmers, who do not have viable businesses and whose incomes may never*

*recover sufficiently for them to be obliged to repay the loan (known as adverse selection)*' (2008, p.17). The issues of the creation of perverse incentives and adverse selection must be better understood by all Australians, especially in relation to debt and debt support. This is discussed again later, but also note for future reference that the first of the National Drought Policy objectives is:  
Encourage primary producers and other sections of rural Australia to adopt self-reliant approaches *for managing climate change* (my italics)

One may now wonder how traditional insurances against all Acts of God or man are ideally conceptualised and coordinated with the government's current efforts to introduce a carbon pollution reduction scheme where trading carbon permits supposedly brings about the best results. I am about to read the current Green Paper on this and will keep you posted. (Is this better for Alzheimer's prevention than crosswords in retirement? Baby, it is to me. I have my heart set on the maximum amount of damage. Why not join me?)

Please see attached for the full submission and related information.

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incentives and adverse selection must be better understood by all Australians, especially in relation to debt and debt support. This is discussed again later, but also note for future reference that the first of the National Drought Policy objectives is:

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Consistent with ideal insurance practices, farming may be logically considered a high risk industry and activity for specific insurance purposes, such as variable climates and their results, e.g. flood or drought. If so, farmers would have to pay a comparatively higher premium price for their insurance protections, related to the industrial risk categories they occupy. If farming is declared high risk mainly because of apparently bad management by farmers, this provides poor incentives and penalises good managers, unless poorly performing farmers can lower their personal premiums through better farming practice, thus also benefiting others in their premium class. Knowledge and assistance to meet the requirements of sustainable development are vital for this, which is why I am so concerned about the kind of communication, skills development and related risk management education which supports it. This is discussed later in mining, another primary industry. Premium incentives alone are probably unable to bring about behaviour change by many farmers. If premiums of small farmers are risk rated too steeply, it also undermines the major goal of taking out insurance, which is to protect against a specific problem.

Food production takes place within local and international markets in which drought and farming debt or loans may or may not be considered problematic, depending on the farming circumstances and related government policies. The PC recently wrote that the new national framework for water should facilitate market transactions so that scarce resources go to their highest value uses and any exceptions from the framework should be fully justified (2007, p. xxxvi). However, one wonders how highest value use may be defined in farming now and in the future, in the light of the need for triple bottom line accounting which is economic, social and environmental, to meet national regulatory requirements in all these areas. Such accounting forms are ideally also designed to inform the key identified risk management relationships between the production chains and their environments better, to reduce all unnecessary costs to all chains and related communities of stakeholders. For example, the Carbon Pollution Reduction Scheme Green Paper, produced by government (2008), claims that trading of carbon permits will ensure that carbon will be reduced at the lowest possible cost. This may well be an article of trading faith, but is it so? I doubt it and suggest more direct fund management and control. The ideal and actual relationships between the farmer's business, place of residence and related debt or debt support require consideration in much broader contexts. However, in an earlier submission I suggested a focus on the marginal farmer, farm

business and farm dependent rural small business might reasonably take place at any time to ask:

***From a sustainable development perspective, why is this particular operation marginal? Is it because the operation ideally should not exist in its location? Is it perhaps because it is a potentially vital infant operation, struggling against a dominating and dysfunctional industrial past, which now deserves to be nurtured and sensibly encouraged in the interests of sustainable development? What is to be done?***

The answer to these questions ideally determines the type of drought support which is discussed and offered to a failing business. Call this rehabilitation, land sale, lease or purchase, compensation, redeployment, retraining or what you will, depending on the individual farmer and government decisions made and recorded on the basis of the aims of sustainable development and the surrounding circumstances. This is ideally an early step along the road to better joined-up government and industry services through much better communication, as discussed latter. Kill off the lawyers and make Content king at last!

From a sustainable development and related risk management perspective, government should try to get production incentives effectively directed to supporting operational aims across all industry and community boards, rather than picking out particular losers or winners for special loans or gifts, which may have unrecognised costs and consequences attached. The conceptual paradigm of insurance supports good policy making if properly applied, although whether certain kinds of insurance should be made compulsory or not is always a moot question. From this perspective, I take issue with the PC's view that:

‘Problems can also arise where insurers do not precisely know the risks of the farmer they are insuring, and as such cannot differentiate between high risk and low risk farmers and so instead charge the one price to all. This can lead to a situation where the riskier farmers purchase insurance and the less risky farmers do not. Furthermore, there is a possibility that once farmers purchase insurance they may make riskier decisions than they would have otherwise (2008, p.17).’

I guess that whether risk prone farmers are more or less likely to purchase insurance than risk-averse farmers is largely unknown and likely to depend on how they view their farming activities, their related levels of financial comfort and their ability to seize presenting financial opportunities effectively, whatever these may be. If insurers do not have the data to differentiate between high risk and low risk groups of farmers and other producers, they are not worthy of the name. Neither can they assist the prevention of injury to farmers or their environments. In order to manage any industry effectively, reliable, aggregated management data, of the kind ideally derived from insurance, is far more necessary than financial advice which is unable to provide such vital information.

For example, in regard to workers' compensation, it is easy from insurance claims data to see that mining is a very risky industry for workers, but it is also evident that the financial costs of catastrophic mining deaths have largely been replaced over time by more expensive, chronic, musculoskeletal injuries. As I recall, farming has very

high rates of serious traumatic injury. But these are often related to clear breaches of safety standards, such as tractors without rollover bars, use of unguarded machinery or driving without seat belts. Children may be involved. The appearance of musculoskeletal or other chronic injury data is highly related to the design of insurance coverage. My memory of the coal mining industry in NSW is that it was not self-sufficient because the full cost of its use of the compensation court was not reflected in the mining premium levels. These were nevertheless very high, at around 12% compared with an all industry average of 2%, if I recall correctly. As I remember, NSW industries subsidised coal mining through paying for the compensation court. I have no idea of the current situation but will address a range of insurance related concerns in later discussion of the key institutional features of an effective and efficient national upstream petroleum regulator. Insurance is ideally designed to provide incentives for reducing risk wherever practicable, while providing the expected levels of support in specified times of injury. Consistent duty of care approaches appear likely to be best for preventing and managing injuries which may arise to workers, consumers, communities or natural environments as a result of production.

**Q. What role do farm financial counsellors play in guiding farm business decision making prior to, during and following drought? How effective is their advice compared to that from other sources? A. I have no idea, do you? All their activities and associations require much closer assessment in the light of opaque and inconsistent government policy and market advisory trends locally and globally.**

The debt levels of many people, including Australian farmers, may be principally explained by the need to service land, housing, business, education or other major costs. Such debt plays a large part in the nature of farm related government assistance and also in government policy on tertiary education and housing, as discussed later. As a small money manager, I have been deeply confused about the advantages and disadvantages of personal debt for years. Many financial experts have advised me I would do well to increase my debt, but I did not trust them. I think the problem of adverse selection that the PC alludes to in farming is increasingly at the centre of many government policies which appear to encourage personal debt as a public good, or at least as being relatively unproblematic. While Australian governments have been active in cutting their own debt in recent decades, their policies often appear to have encouraged the Australian public to keep taking on more and more. This has also encouraged rapid growth of many adverse selections and related servicing costs, as discussed later. I bet a clear majority of Australians, including financial advisers, are now extremely confused about whether increasing an individual's debt is the best answer for their future wellbeing. I doubt that personal confusion on this client service issue ever stopped a service or product salesman.

Debt now seems automatically promoted in many Australian and US quarters as a normally desirable and necessary investment. For example, the Australian economist, Bruce Chapman, appears to see life's milestone goals as ideally achieved by borrowing. This may include payment of many thousands of dollars for university education. Yet this process may also be irrelevant, for many reasons, to the work the education consumer ends up doing. How many consumers default on government loans? Such loans appear to me to be a way of trying to make consumers pay

exorbitant amounts of money for closed, badly designed and managed tertiary education services. These may nevertheless be perceived as vital for the consumer's entry to labour market enclaves where professional service providers may still serve themselves first through the historical powers of their collegiate monopolies. Some people respect nearly all professional advice and think it is a reflection of the wish to help. Such people may be unable to understand the experts' words, but trust, as they might their God, crossing their fingers for the best to follow. I am not one of those. Without good evidence to the contrary, I think, somewhat like the economist, that anybody serving me is likely to think of serving themselves first, but within their framework of guiding cultural standards. I like to know a little about the latter to judge them, however poorly. Australians, especially those living in rural areas, deserve much better, cheaper, open education, which is discussed later and in the attached.

The diverse, contradictory but supposedly expert premises in law, economics and many other sciences can only be effectively reconciled from the perspective of broader, clearer industry governance frameworks designed for more sustainable development. Australian structures for sustainable investment are discussed later in response to the PC question of what the key institutional features of an effective and efficient national petroleum regulator should be. However, effective operation of these management structures also depends upon adoption of Hilmer's definition of competition as, 'striving or potential striving of two or more persons or organizations against one another for the same or related objects' (1993, p.2). Hilmer's discussion of competition was supported by heads of government but botched in its implementation to earlier trade practices legislation which contains no definition of competition. This is not trivial. Effective competition policy is vital for development of a free market, cost control and consumer and environment protection. However, the Trade Practices Act (TPA) contains no definition of competition and rests on 19<sup>th</sup> century assumptions about the horrors of monopoly and more traders always being the better. The consumer is another trader in this paradigm. Today this is demonstrably stupid, especially when administered by the biggest monopoly of them all – the lawyers. They also make sure, through their client legal privilege, that nobody else gets any information of the kind the court would need to make intelligent decisions. The PC's attitude to its own inquiry into allegations of unfair use of market power in telecommunications is summed up in its quote from the Hilmer Report:

The central conundrum in addressing the problem of misuse of market power is that the problem is not well defined or apparently amenable to clear definition....  
.....Even if particular types of conduct can be named, it does not seem possible to define them, or the circumstances in which they should be treated as objectionable, with any great precision.....Faced with this problem.....the challenge is to provide a system which can distinguish between desirable and undesirable activity while providing an acceptable level of business certainty. (PC, 2001, p. 154)

This view also provides justification for the national petroleum regulator model proposed later, in which industry cooperates with government and community planned approaches to development and competition, as discussed later. The suggested industry regulation and investment approach also appears consistent with the direction of the PC review of Australia's consumer policy, which called for the Council of Australian Governments (COAG) to oversee a review and reform program

for industry-specific consumer regulation. The proposed approach champions a statutory authority style of governance and investment operation, which seeks to harness the benefits of competition better by cutting all dysfunctional service costs and also gathering data more reliably and broadly, while driving towards key national goals related to sustainable development.

I have spent the past twenty years discussing the point of statutory authority models of administration for improving health and gaining more sustainable development through more effective competition. On the other hand, I have very little understanding of how land, housing, related loans and loan support should be effectively regulated in order to achieve the new Australian government goals of more affordable and greener housing for all. The NSW land planning system and its related legislation seem comparatively illogical, incomprehensible, confusing and open to abuse to me. Australia also operates in a global economy and is feeling the effects of the US sub-prime mortgage crisis. The major US housing loan and related investment systems seem to ignore the historically expected trading relationships between monetary value and housing stock. As debt and debt relief play such a huge part not only in Australian farming but also in all other Australian business and housing, the issues related to perverse incentives and adverse selection need to be much better canvassed and understood. Good housing and debt policy seems unlikely to be designed by following the US. What on earth are they doing?

According to the explanatory wording on a diagram I don't understand, which is entitled 'The two ways Fannie Mae Works' and which was reproduced from the New York Times by the Australian Financial Review (AFR 15.7.08, p.16):

*Fannie Mae takes mortgage loans from banks in order to mortgage them in the form of mortgage-backed securities. There are limits to the type and size of loans it can guarantee. Those mortgage-backed securities are sold to investors and Fannie Mae guarantees that the loans will be repaid. Fannie Mae also borrows money from the debt markets, traditionally at a rate much lower than other banks and uses it to buy mortgages it holds as its own investments. By buying these loans, Fannie injects new money into the housing economy.* (My italics).

Anne Davies, in a report from Washington which was published in the Sydney Morning Herald (SMH, 19-20.7.08, p.39) states about Freddie Mac and Fannie Mae: Their business is to buy mortgages from the retail banks and mortgage brokers who write the loans, package them up into securities and sell them to investment banks and investors from Wall Street to Sydney. *This frees up the brokers and banks to lend more money. For this service, Fannie and Freddie earn their fees.* But their big advantage is that, although they are now listed companies, they were originally set up by the government and still have an implicit government guarantee, enabling them to borrow money more cheaply. *In short, they make the US mortgage market go round.* (My italics.)

The descriptions of the businesses outlined above are the clearest I could find in the daily press, but I remain mystified about what either of the above descriptions mean in practice and how such behaviour is logically justified by government. I thought capitalism was supposed to produce cheaper products through competition. However, Mark Zandi, Chief Economist at Moody's, states in the SMH article that house price declines are at the root of all US financial and economic problems because investors



can't tell what the bottom of the market is or how far mortgage-related assets have to be written down.

Being exposed regularly to US 'quality' journalism and TV election coverage has led me to the view that US government is a comparatively policy free zone. I find this alarming as the US also drives the global economy. Comparatively little US government policy appears to be discussed at length and justified in public interest based terms, rather than in narrower terms of financial or related political or personal interest, at least on 'quality' TV or in newspapers available in Australia. I guess this is partly because the data to construct the broader, public interest based approach to government regulation which exists in most developed economies is less available in the US, because of the driving supremacy of financial and related legal interests. Any benefits the US derives from its approach to government appears often to be related less to the benefits of competition, as defined in anybody's terms, and more to the ability to keep manufacturing monetary value apparently from thin air, while also charging fees for this apparently miraculous behaviour.

Is Australian carbon pollution trading susceptible to such a problem? Does it matter?

In comparison with the broader based government policy and development structures which exist in many other developed nations, US government appears more like the composed expression of a strife of interests, which must primarily gain financial support for their expression. The main outcome of this appears to be the structural prevention of more clearly coordinated development of rational, evidence based policy and debate, pursued in the interests of the American people. From my naïvely Australian perspective, the vital power of US government appears to be mainly to decide whether to go to war or to retreat from it. The continuing historical development of governance structures which appear to have remained essentially feudal is expensive because its supporters have to be bought off all along the route. They seek to shift the costs of this to others and often succeed. US government appears manipulative rather than democratic or supportive of competition. Will Australia always allow itself to be mindlessly dragged in the US wake?

I certainly hope not! (No offence to the wonderful Broadway or Hollywood product, Google, Bill Gates or Warren Buffett. We have all admired them massively for years.)

**Q. What is your understanding of the meanings of preparedness and self-reliance?**

I understand 'preparedness' to mean the capacity to run one's business effectively and also in line with the required implementation of the minimum standards which are consistent with the expectations of the community, as ideally outlined in relevant Australian laws. Many businesses may operate according to higher standards, and all should be encouraged to do so. All laws should have clear aims and should be tested to see if these are being achieved or need revision or abolition. If a business meets the above standards of preparedness I assume it is also self reliant, unless earmarked as eligible for additional financial or related economic support, for some reason which may normally also relate to legislation or other conventional agreements. Such

agreements may cover contracts which may be individually or collectively entered into.

To me, self-reliance normally means achieving economic or other forms of self support. The related concept of self determination means the freedom to speak one's mind and make one's own decisions. These are comparatively new social goals, which appear to be replacing former ideals about the importance of unalloyed loyalty and trust. Earlier generations, for example, saw female dependence on the male wage as desirable. Today this is less true. Loyalty to a supposed protector has historically been the mark of all dependence, along with the willingness to protect his good name and secrets. This remains enshrined today in client legal privilege and many key legal concepts. However, many other traditional economic and moral values have receded, due to the expansion of markets and the related scientific potential for more evidence based activity. Medical science replaced the priest. Wives got jobs and spoke up. Feudal relations still rule in law. This anachronism prevents more effective administration. This is addressed later and in the attached discussions on open education, data gathering and dispute resolution.

(Ask the Attorney General to take these issues up with George Pell and the Pope. I am.)

In a developed economy such as Australia, there is no contradiction between valuing self reliance and self-determination very highly indeed, whilst also expecting a high quality, well managed environment and responsible parenting. As a citizen, I am happy to pay taxation and expect government to allocate funding on my behalf, because it has the broader knowledge to do so more effectively than I. As an individual, my charitable allocations can only be comparatively ignorant. I reject the US preference for low tax plus personal choice of charity as a rational option. The payment of taxation which is designed to support development for less emotional and more informed reasons than individual choice is necessary. To prefer charity to more informed policy making and related taxation seems primitive to me. From this perspective, tipping also seems to be a practice which is mainly related to feudal opportunities for exploitation and corruption. Investigation of such issues is important for good design of taxation, welfare, industrial relations and related concerns. To me, the goals of trust and 'social capital' appear most likely to be well met if based on evidence, not emotion. The US murder rate far outstrips that of other developed nations (Tiffen and Gittens 2004). Trust seems lacking in the US.

**Q. What would be the key institutional features of an effective and efficient national upstream petroleum regulator? A. See suggested elements below:**

Legislation and Related Approvals for Data Driven Management

The petroleum regulator should aim to meet the goals of sustainable development which are economic, social and environmental as effectively and efficiently as possible. All the related legislation it administers should be designed with this uppermost in mind. It should have goals, clear and sensible key definitions and outline the basic requirements related to the achievement of the goals in plain English, in as few words as is reasonably practicable. Achievement of these goals should be under continuing review and the process should also enable the collection of related management data. This approach ideally highlights, consolidates and streamlines all industry approvals processes so that the industry production chain and its

requirements are made visible and actionable on a more clearly and logically informed basis, and so delivered more effectively and faster.

The above is a broadly scientific approach to regulation, which is sometimes called 'outcomes based'. In the 1980s both Labor and Liberal governments appeared to understand the need for it. However, in the last twenty years many bureaucrats and politicians appear to have lost the plot or, like the lawyers, determinedly never knew it existed in the first place. As a result, the great bulk of Australian legislation is growing rapidly upon its earlier, more thoroughly feudal models. This means it has no clearly identified aims, no definitions of key terms, and the interpretation of the written Word in court, using adversarial methods, is paramount. This 'black letter' approach to legislation undermines all potential for more reasonably scientific and data driven management. (Discussion of the legal paradigm is in articles attached.)

I disagree with the Department of Resources, Energy and Tourism (DRET) consolidation and streamlining of single-purpose regulations that are subordinate to the Offshore Petroleum Act (OPA) into three areas – resource management, safety and environmental protection (PC 2008, p. 9). I think the Department supports the discussion of regulation outlined by the PC, which is also most unhelpful. This distinguishes between economic and social regulations. Economic regulations supposedly '*intervene directly in market decisions such as pricing, competition, market entry or exit*'. Social regulations supposedly '*protect public interests such as health, safety, the environment and social cohesion.*' (PC 2008, p.5). The later PC discussion entitled 'Some potential sources of unnecessary regulatory burden' (2008, p.18) demonstrates the key problems arising from this conceptual model on page 5, which the PC nevertheless seems to have adopted.

The goals of triple bottom line accounting for sustainable development are ideally economic, social and environmental. Distinguishing between economic and social regulation is not logical. All economic activity ultimately has a social aim, which is the preservation of life and its associations. To separate resource management from its ideally integrated associations with safety and environmental protection is a recipe for domination by traditional managers; supported by those whose perceptions and reactions always supported them in the past. To elevate safety above the wider category of social goals while apparently ignoring all others is also misguided. Moreover, the management of the health, as well as the safety, of workers, consumers, communities and natural environments, needs to be integral to petroleum resource management, not ignored or separated from it. Ignoring health has a particularly problematic history in mining, because the refusal by mine managers and trade unions to deal with the known dangers of asbestos for many decades during the 20<sup>th</sup> century was a natural part of a danger money era with related expectations of secretive practices, including by trade union inspectors.

As I recall, the mining industry resisted the adoption of new occupational health and safety (OHS) legislation across Australia during the 1980s. The new acts recognized safety as part of broader concern about health. They recognized the reality that chemicals could have a major impact on health and that workers have a right to know what they are breathing or handling and its effects. This also paved the way for more effective risk management through introducing a modern focus on preventing injury and rehabilitation after it, rather than paying compensation through courts after

catastrophe has struck. OHS acts challenged the secrecy which had traditionally bound mining inspectors, by their provisions that people must have information about hazards of work and must also have their concerns about being in danger clearly heard and dealt with. Asbestos and shipping claims were both powerful forces which sank the English insurers, Lloyds, and its investors, including Malcolm Fraser. DRET appears to live in the past.

A broader and better coordinated management division is required to assist new thinking, which is necessary for innovation to support more sustainable development. Australians have hardly started thinking about sustainable development yet. I believe that if this happens it can save money by simplifying systems drastically and by coordinating service delivery and related accountability much more effectively. In this context I am impressed by the apparent transferability of National Drought Policy objectives to other industries:

Encourage primary producers and other sections of rural Australia to adopt self-reliant approaches *for managing climate change* (Why only climate change?)

Maintain and protect Australia's agricultural and environmental resource base *during periods of extreme climate stress*; (Get rid of the phrase in italics, as discussed earlier) and

Ensure early recovery of agricultural and rural industries, consistent with long-term sustainable levels

These seem to me to be good guiding regulatory principles for broader planning action.

### **Regulations, Standards, Codes of Practice and Guidance Notes**

As I understand it, subordinate legislation comprises any supporting laws, regulations and other technical standards called up in the principal law. These logically lie beneath an overarching law, to assist its administration to achieve its aims. For example, state dangerous goods acts are usually seen as subordinate legislation for state OHS acts, and so are the regulations of the OHS acts. The description below refers to OHS acts, but the process is the ideal logic of all risk management. This broadly scientific approach is hostile to the feudal and costly operations of courts, which also make effective risk management data collection impossible. The supreme monopoly decision making power of courts rapidly infects lower administrative logic with their prescientific assumptions.

Australian technical standards, codes of practice and guidance notes support state OHS legislation and if called up specifically in it, must be followed. People are expected to follow expert codes of practice considered relevant to their job operations, unless the evidence is that another course of action is preferable for health and safety reasons in the specific situation under consideration. This approach provides the legislative context for a generally more independent and informed approach to work, which can be compared with the scientific, evidence based approach, required of health workers. For example, a health worker is ideally expected to identify a client's problem and to apply treatment after consultation and consideration of the relevant body of scientific evidence or expert treatment protocols. However, the treatment may vary as far as this appears to be necessary to meet the particular health

needs of a specific individual or situation. The reasons for any deviation from the generally expected expert practice should be documented. Ideally, all such information contributes to research aimed at improving the outcomes for specific individuals, communities and environments, in the light of the study of a broad range of specifically grouped environments, problems, treatments and outcomes.

### **Management Structure and Functions**

The management structure of the petroleum regulator should aim to support the regulator's legislative goals. One major difference between a statutory authority and a private sector company is that the former has the basic aim of serving regulatory goals and the board is drawn from the key stakeholders and other stakeholders. The statutory authority is not driven primarily by profits and has no shareholders. Its board reports to the appropriate minister or ministers but normally perform independently, according to normal commercial principles, unless achieving the legislative goals clearly requires some other action, which should be made clear to all. If the elected government wishes to interfere in the board's management and related administration in any way this also must be done openly, so the action can be openly judged by all Australian communities.

This management structure is the one best designed to gain the effective implementation of competition policy, as envisaged by Hilmer, to achieve the goals of sustainable development – economic, social and environmental - by triple bottom line accounting.

Program budgeting, as partially implemented in the public service by Wilenski (1982; 1986), is central to this approach. Managers start with program or project aims which have been consultatively developed, then establish strategies to meet them and prepare related budgets. All activities are monitored and their outcomes are measured in the light of general legislative aims. Unfortunately, the Senate Committee report of inquiry into transparency and accountability of Commonwealth public funding and expenditure (2007) ignores program budgeting. It recommended complex additions to the existing budget process which are likely to add to current budget opacity and all related cost. The committee concluded its recommendations are designed to restore the Parliament's historical and constitutional prerogatives. This is undesirable in an era where open partnerships with industry and communities are required to achieve national and regional goals related to sustainable development effectively, through fair and efficient competition. The Senate committee seeks to take Australia backwards because it is blinded by an outdated Constitution and financial administration which reflect the English governance model in which elected politicians, administrators, and the judiciary are separate, independent pillars. (This prescientific approach sees ignorance as bliss.)

### **Key Elements Supporting Management**

**Data Gathering and Communication:** A risk management approach may be logically broadened and used to assist all planning and management aimed at caring for and developing communities and natural environments. This integrated, data driven administrative approach, ideally meets all sets of national and local interests comparatively well. Industries and governments must collaborate to achieve it.

People need to know what they are doing and why. Plain English information on websites is tremendously useful to achieve this and to avoid confusion, inaction or recourse to lawyers. Ideally, people also need to get used to the idea that writing things down is necessary and that judgements must be made and justified. Later views may suggest earlier ones are wrong.

From a scientific perspective rather than a feudal one, revision of a former position because of better knowledge is not a hanging offence. Words are natural, not frightening.

The effectiveness of all relevant scientific, legal and related paradigms for evidence gathering, analysis, judgment and recording require continuing, systematic, broad, analysis, to determine their comparative powers to meet the needs of communities and the key stakeholders, whom they ideally serve, rather than dictate to. Independence is conceptualized in this context as the responsibility to make informed decisions, which can withstand scrutiny from any quarter. This emphasis on transparency is consistent with existing academic rights to freedom of speech and duties to become increasingly informed from an appropriately scientific perspective. This is also vitally necessary for sustainable development.

The proposed mining industry regulator and its related communities ideally need to consider broader Australian communication goals carefully, to achieve all their sustainable development objectives as effectively as possible. According to an Australian Competition and Consumer Commission (ACCC) consultation paper entitled 'New digital television services' produced in December 2006, the first two objects of the Radiocommunications Act (1992) are to provide for management of the radiofrequency spectrum in order to:

- (a) Maximize, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum
- ( b) make adequate provision of the spectrum:
  - for use by agencies involved in the defense or national security of Australia, law enforcement or the provision of emergency services
  - for use by other public or community services

This clear legislative start is welcome but unusual. I had wrongly assumed that all the relevant legislation would be incomprehensible and have no aims. The objects of the Radiocommunications Act appear designed to focus all minds on broadcast content, which seems vital, but which is normally ignored in such inquiries. For example, in 2000, the Treasurer initiated an inquiry into telecommunications competition regulation. In its report which was also referred to earlier, the PC (2001) stated that, 'the main way in which pay TV providers compete is via content – in the words of some participants (in the inquiry) 'content is king' (p. 145). Unfortunately this is the only PC reference to content in its report, in spite of the fact that the terms of reference provided by the Treasurer specified (5b) that the review should: ***Have regard to the established economic, social and environmental objectives of the Australian government (PC, 2001, p.v).*** (Peter Costello had a lot to contend with in my view.) Education for sustainable development is vitally necessary media content. Adding a small section to the TPA on consumers, while ignoring the broader implications of Hilmer's report was criminal, from a sustainable development perspective.

**Consultation:** In my experience, the desire to escape accountability for decision making is the biggest enemy of good management. When decision makers in any situation are clearly identified, then any advice provided to them can be helpful, if only in a therapeutic way for the person who needs somewhere to express their views. But this is the bleakest scenario. It is hard to ignore intelligent advice forever, especially when all are openly invited to think and judge, in the interests of achieving organizational goals which are clear. I am a big fan of Australian government consultation practices. They write something. They let people know about it and ask them what they think of it and why. This seems the most natural and intelligent way to go to me. There is an open paper trail. One can also email any politician and many departments with a question or suggestions. The private sector seems like a fortress in comparison. (So much for customer service! If Toyota sends me any more of their totally crazy customer surveys while providing no email contact address, I'll go mad.)

**Skills Development, Education and Certification:** The PC report on its review of the primary sector stated that recent COAG initiatives to facilitate mutual recognition of skills had made slow progress towards fully implementing the objectives of the mutual recognition arrangements and that COAG programs should be broadened to cover all trades experiencing severe skills shortages, including those specifically affecting the primary sector (2007, p. 224). Elsewhere, the PC wrote about mining: 'With regard to some existing regulatory frameworks such as those affecting vocational education and training and on transport infrastructure (especially for exports), regulatory reform can play some role in removing bottlenecks along the delivery chain and in achieving consistency across jurisdictions. However, funding and pricing are also very important'. (PC 2007 p.xvii).

Communications networks, skills development, education and labour mobility issues require urgent consideration and action in this context. The PC notes that currently there are shortages for trades (especially for competencies associated with mechanical and electrical trades), semi skilled employees (such as miners and plant operators) and for professionals (mining engineers, metallurgists and geoscientists). There are also severe shortages in related areas such as transport and logistics, for example, heavy vehicle and train drivers and port and at-sea pilots. According to the Minerals Council of Australia, 'based on protected future expansion', the minerals sector will require 75% (or 70000) more employees by 2015 than in 2005. The worst shortages are likely to be for semi-skilled workers and trades (PC, 2007, p.217). Open education and certification are vital. Open curriculum should be collected now.

Broader, more up to date, flexible and cheaper education is vitally necessary to bring about community understanding and change to support sustainable development. This direction should be encouraged by broadly available, clear and cheap risk management education and by making key undergraduate and related curriculum content openly and freely available to all, so that research training for postgraduate students can be built more transparently and effectively on this clear basis of promotional and certifiable knowledge. This would benefit Australians and any others who model their curriculum or similar approaches to governance for sustainable development upon it. An open curriculum approach would also be the most obvious and effective way of developing skills quickly and flexibly. It would be helpful for fighting inflation and for business and community innovation and cost

cutting. The closed, computer-based, distance education initiatives which Australian universities have funded in the past decade are comparatively little utilized (Gallagher 2000; Nelson 2002), their production costs are more expensive than classroom teaching and they have not made money (Marginson 2004). These products are not open to scrutiny so their quality cannot be judged. Openness will improve it. Certification practices need to be investigated and undertaken in this context.

**Innovation, testing, audit, evaluation and related research:** In one of his recent reports to government, on innovation and climate change, Garnaut did not define innovation. One may think of continuing and improving development of production methods on one hand, or pure research conducted in an academic environment, on the other. The former approach seems more likely to be designed to solve a particular practical problem of production or service. This innovation process ideally also creates a learning culture. Contracting out research or related services may be preferred by managers for good or bad reasons, in my experience. The latter include the management desire to remain in control while escaping additional work, thought and responsibility for new decision making of any kind which is not comparatively familiar. Few Australian employers appear able to undertake or support much scientific and technological research and development on their own behalf. However, across the board benefits may be derived if industry leaders, their organizations and members are willing to participate in broader, more open, regional community planning approaches which also address effective communication, skills development, education, and research to achieve national objectives related to control of greenhouse gas emissions and sustainable development.

**Dispute Resolution:** The establishment of dispute resolution systems and the comparative identification of their outcomes is a type of action research, which is also consistent with the views of Popper (1972) that all administration should be regarded as experiment. Action research is a problem focused activity proceeding in a spiral of steps, composed of planning, action and evaluation of the results of action. Community education, consultation, monitoring and outcome evaluation are also centrally necessary in action research. Ideally, it is seen as a collective, emancipatory practice for the community involved. In order to understand and change social practices, social scientists have to include relevant community based practitioners in all phases of inquiry. The need for community involvement in all health policy development and administration has long been acknowledged in national health service goals, if not in all professional or bureaucratic practice. The attainment of community wellbeing is related to the achievement of national mental health and Aboriginal health goals. The establishment and trial of alternative dispute resolution models may be a comparatively effective process for assisting achievement of many related legislative aims.

Thank you for the opportunity to make this submission.

Carol O'Donnell

(Note: other attachments included in email)