SUBMISSION ON ISSUES PAPER 4 OF THE GARNAUT CLIMATE CHANGE REVIEW WHICH IS ENTITLED RESEARCH AND DEVELOPMENT: LOW EMISSIONS ENERGY TECHNOLOGIES

OVERVIEW

This paper answers the following three questions from Garnaut Climate Change Review Paper 4 entitled, 'Research and Development: Low Emissions Energy Technologies'.

1. What is the role of an emissions trading scheme in driving innovation?
2. How large are the market failures in innovation?
3. Are there alternative frameworks that may be useful in the process of policy analysis and development in regard to innovation?

All related responses to earlier Garnaut papers and submissions to the Commonwealth Department of Climate Change and the Productivity Commission Inquiry into a National Consumer Framework are available on request. In answering Garnaut's current questions I arrive at the general position outlined in the overview below:

Innovation should be first be identified and undertaken on regional industry and community bases more openly, critically, scientifically, and competitively, in the light of the general framework of key international and national agreements, standards and regional planning processes which have been designed to promote sustainable development in Australia and beyond. The innovation requirements of industry, communities and their related environments must primarily be identified, prioritized, and funded in this context. To bring this about, the Department of Climate Change Regulations Policy Paper entitled 'National Greenhouse and Energy Reporting System' (Feb. 2008) should first be adopted as an industry code of practice and an audit of the greenhouse gas emissions of large polluters should be undertaken to consider the adequacy of the current directions of the National Greenhouse and Energy Reporting System Discussion Paper entitled 'Technical Guidelines for the Estimation of Greenhouse Emissions and Energy at Facility Level (Energy, Industrial Process and Waste Sectors in Australia) (Dec. 2007). A more informed, freer, and more competitive market can then be ushered in by big polluters with government and related community help. Ideally, the government will provide the big polluters with an appropriate number of carbon permits, which have a scientifically identified monetary value. The design of the permit issue is ideally aimed at promoting the control of inflation and more open, scientific, stable, and competitive operation of all markets, through leading activity in relation to the control of greenhouse gases. The big polluters can then choose either to reduce their greenhouse gas emissions at the business source, or invest in the control of emissions identified in other communities. This is a direction which helps the NSW Premier and all willing others to get rid of various mafias which place additional costs upon many consumers to gain all the privileges of control. Openness and science enable related legal, bureaucratic and academic cost reductions. This proposal also provides a perfect final solution to penis envy, but education is needed on how to grasp it first. (Thanks to my Bachelor of Arts from Queensland Uni. I can also give you plenty of that.)

What is the role of an emissions trading scheme in driving innovation?

It is impossible to know the role of an emissions trading scheme in driving future innovation because there are too many uncertainties about how the market will treat any carbon price and how innovation will relate to this. For example, an article from The Economist, entitled 'Coal power a burning issue' in the Australian Financial Review states:

> In theory, the carbon price (in Europe) and the threat of one (in the US) should dent enthusiasm for coal. But in practice many utilities are betting that the disparity in fuel prices will outweigh the cost of extra permits to pollute. At the moment permits cost pennies in Europe because governments handed out too many of them…Although there should be more of a shortage starting next year, the futures price would have to rise from the current 22 per tonne of carbon to over 30 per tonne to prompt a significant switch away from coal over the next two years, according to Henrik Hasselknappe of Point Carbon consultancy.' (AFR 19.11.07, p. 60)

Enron first made its name as a clean energy producer but its managers found they could make more money for themselves in highly speculative deals of many kinds, rather than producing or innovating effectively in the energy market. (McLean and Elkind, 2004). Was Enron a rare bad apple or the logical expression of a prescientific, anti-competitive, market designed primarily to serve its controlling sectional interests? I think the latter. This problem is endemic and Australia should design a more open, scientific and therefore more competitive and freer market. This process will challenge older regulatory views.

In the published papers of an annual bank conference on development economics, Stiglitz and Muet (2001, p xix) argued that economic crises have shown the need for greater world governance, especially to manage 'public goods' such as financial stability and environmental protection. They stated many economists now look beyond 'the Washington consensus', which they define as unconditional liberalization of markets, lack of attention to institutions, and macroeconomic policies geared towards lowering inflation rather than development and employment. They claimed development success requires high savings, rapid capital accumulation, high levels of training, strong capacity to acquire new knowledge and rapid insertion into international trade. Weak institutions, on the other hand, lead to economic instability and financial crises. They also argued that effective world governance must closely involve employers, trade unions and non-government organizations. However, the Australian Government is strongly committed to controlling inflation first. Inflation benefits the comparatively wealthy investor through providing higher interest rates on their lending. The comparatively wealthy are also more likely to borrow large amounts of money than the poor, so may be content if inflation reduces the value of their debts. On the other hand, inflation may drive the small but struggling business to desperation if the repayments on much more modest debts cannot be met.

In the Australian national context it seems strange there has been little or no public discussion of how carbon permit pricing options would affect inflation, let alone

innovation. For example, if government gave big polluters free permits as an incentive to control the effects of their own or others' noxious emissions, instead of tax cuts for research and development, which is the more common national practice, how would this affect inflation or innovation? I have no idea about the possible effect on inflation but think that free permits for big polluters could encourage innovation in the industry and community development context I have discussed in many previous submissions, as well as this one. From producer and consumer perspectives, as distinct from financial service and related speculative approaches, industry superannuation funds appear potentially low risk, stable, low cost investors in emissions control and other sustainable development strategies. However, this depends on the fund investors having sufficiently reliable market knowledge in order to invest wisely in more practical, obvious, emissions reducing businesses, as distinct from pure research, leading to patents and the speculative market.

In arguing that Australian communities, governments and industries require more broadly designed, open, scientific, democratic, freer and more competitive approaches to attainment of sustainable development, I follow in the administration, social insurance and related competitive approaches of Weber, Keynes, Beveridge, Galbraith, Wilenski and Hilmer. I am naturally also guided by key aims in UN Conventions and agreements in regard to sustainable development and related matters. In this context, Australian approaches to the general duties of care outlined in occupational health and safety, rehabilitation and workers compensation legislation are ideally also applied in duties of care to consumers, communities and their environments. Australian approaches to designing national health promotion, services and industry superannuation schemes also point the way forward to more democratic, competitive and stable market design. Risk management and related innovation, which centrally involve open information provision, education, its practical application in production and assessment of comparative outcomes, are ideally treated historically, scientifically and competitively in their related global, national and regional community and industry contexts. (Think globally, act locally.)

Garnaut's paper does not define innovation, in comparison with continuing and improving development of production methods on one hand, or pure research conducted in an academic environment, on the other. I tend to support the former approach in preference to the latter, because it seems more likely to be designed to solve a particular practical problem of production or service. This innovation process is ideally also used to create a general learning culture in the primary organization and in others to which it may be related. Comparatively few Australian employers appear to be in a position to undertake or support scientific and technological research and development on their own behalf. However, across the board industry benefits might be derived if industry leaders, their organizations and members are willing to participate in broader 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 broader sustainable development. Industry, government and community relationships with higher education and other research, education or development partners are ideally forged in this practical context. The aim is to broaden sustainable development and grow all businesses, by utilizing economies of scale and competition more effectively.

In contrast to the above, an academic discipline based approach to conducting research may be too theoretically and narrowly constructed to be useful outside the university career path. The research interests which dominate and fund academics may also be driven by disciplinary paradigms which are challenged by the new, internationally developed goals and requirements of sustainable development. Law, economics and accounting provide obvious examples of this problem which also obstructs program budgeting and triple bottom line accounting – economic, social and environmental. However, there may be some support in universities for the industry based innovation direction I recommended earlier. The Group of 8 Universities Response to the Expert Advisory Group's Preferred Model paper for the Research Quality Framework (RQF 2005) identified the need for a clear statement of research purpose for application of the RQF. The first two points of the Group of 8 proposed purposes for the RQF were:

1. To provide governments and business with the additional information they need to assess the value of their investments in research
2. To provide researchers and institutions with the additional information they need to plan future research strategies.

In 2002, at a medical research conference that I attended, the Sydney University Business Liaison Office's Kevin Croft offered the following definition of commercialisation:

> 'Maximising the process of transferring outcomes to the community in a manner which optimises the chances of their successful implementation, encourages their use, accelerates their introduction and shares the benefits among the contributing parties'

This commercial approach seems useful for many joint venture contracts between government, industry and other industry or community development organizations seeking more sustainable development. I proposed that this direction should be adopted to make key undergraduate curriculum content openly and freely available to all, so that research training for postgraduate students could be built more transparently and effectively on this clear basis of promotional and certifiable knowledge. This would benefit Australians and any other people who might model curriculum on similar approaches to governance for sustainable development upon it. It seemed to me that an open curriculum approach to education would also be the most obvious and effective way of developing skills quickly and flexibly and that it is also vital 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 education products are not open to scrutiny so one cannot judge quality. Openness will improve it.

In my experience, on the other hand, most academics who write about innovation are thinking about patents and my guess is that Garnaut and Grubb, (the former quotes the latter), are no exception. The number of patents registered plays a role in determining the supposed quality and prestige of universities, so they are locked into promoting this

process. As a former academic I have often watched with wonder at the promotional activities of the Sydney University Business Liaison Office, which is dedicated to assisting academics develop patents. Doing so looks to me like a very poor way of encouraging innovation because it is extremely secretive, bureaucratic, expensive, slow, highly uncertain and driven by the interests of the investors in making financial returns, rather than applying the original research which was funded. How comparatively productive is it in practice? I have no idea. However, I often wondered what sort of academics would willingly put themselves through such a highly speculative and stressful ordeal and whether many were able to speak about and practice innovative methods more openly.

How large are the market failures in innovation?

Businesses, lawyers and courts normally rely upon protecting legal privileges, which demand secrecy and may encourage misinformation in the legal and client interest. This is the opposite of an open market ideal, in which perfect information leads to perfect competition. More open and data driven management is necessary to achieve sustainable development and better policy formulation on a continuing basis. Systematic feudal frustration of the free market ideal also provides many reasons why markets do not clear. The rich may live off and encourage market peaks and troughs through their secretive market dealings driven by opaque financial interests. If one regards every loss of biodiversity and every endemic disease throughout the world as a sign of market failure to achieve the key UN goals of sustainable development for all, the market failures in innovation appear to be very large indeed. Without government backing there is usually no money to be made in identifying and addressing the problems of the poor and their environment. The wealth created through innovation may trickle down, but taxpayer support on a larger scale may often be required to support services to poorer populations. However, governments must also attack the feudal practices of the rich, which inhibit all more informed, scientific, competitive, freer and stable markets. Governments providing service support while tolerating service secrecy are most likely to be providing a rod for their own back. Clear and open communication is vital in the recommended paradigm.

Market failure in innovation may often be better conceptualised as a failure of political will, rather than a failure of innovation or research, and tackled accordingly, in my view. Having been a public servant who became an academic, I hated seeing so much money wasted on doing research I regarded as largely pointless, in comparison with addressing political systems which are obviously broken, but which no one dares to face or fix. For example, it seems to me that the entire budget of the Australian Housing and Urban Research Institute might mainly be seen as another way of masking a continuing, long term political reality about how development has always been driven by financial links between developers and political power in New South Wales and other states. From this perspective, doing research is something which legitimates ignoring people who actually know what is going on –in this case builders and developers – to focus in a comparatively dumb and discipline driven fashion on essentially peripheral issues, rather than the cruder nuts and bolts of industry and related community practice. I am often astonished by the tenacity with which researchers may cling to academic perspectives, rather than ask what may appear to simple minded others to be more obvious questions about how consumer

choices are structured by specific industry development and related political interests. In the choice between more open, practical, political and technical investigation of problems and more discipline based research, I usually prefer the former on the grounds that it is more likely to gain broader public attention and so be more productive and educational.

Do Grubb's diagrams (p. 3, p.7) assume all innovation occurs by patents? To what extent is this true? I have no idea. I generally assume innovation primarily depends upon the development of a learning culture, and that secrecy inhibits this. In practice, academics who get research grants from the Australian Research Council or related bodies of their academic fellows are invited to publish or perish in academic journals which normally have a comparatively narrow professional readership. However, if academics get their grants from private industry or government they are usually expected to keep all their dealings secret, unless otherwise authorised. Their work may never see daylight if it is seen as inconvenient for the funding authorities, which may be almost as often as the reverse. From my perspective, the maintenance of any institutional privacy (secrecy) is synonymous with the inevitability of ignorance for all others. The ideal of secrecy leads to perfect ignorance, rather than the reverse. Ignorance is the opposite of insider trading?

I object to Sydney University's newly stressed, apparently automatic, confidentiality requirements contained in all their Australian Workplace Agreements (AWAs), which mandate secrecy for all 'trade secrets, institutional knowhow, plans, strategies and initiatives' of the university. This conflicts with both freedom of information and freedom of speech, which I think should normally be conceptualized as related to a general duty to pursue the truth scientifically, as distinct from doing whatever it takes to pursue professional and personal advantage in the university or market. Australian universities often appear to have fallen between many dysfunctional stools in rejecting a few of their weaker, traditionally feudal collegiate relations, to take up with some more narrowly primitive bureaucratic and commercial fellows instead. Information technology usage in academia often reflects this problem. Are Australian academics expected to whisper their sustainable development goals, strategies and initiatives to their intimates around the world, until all have been implemented and evaluated? I guess so. (Dumb men are best?)

In his submission to a recent higher education review, Bruce Chapman (2001) calculated that it takes the average male thirty-one years to pay off an Australian higher education debt of $100,000 and that after 38 years the average female has paid off a higher education debt of only $60,000. The current closed shop approach to higher education is a narrowly elitist and socially dysfunctional approach to education and research. At worst, one may be educating the 'thick rich', lawyers or their related ideologues, to take up controlling roles in industries and government which they know little about in practice. The current university education may also take a lot of money from young people who have little hope of getting jobs to match what they have paid for their student experience. Broader, cheaper and more flexible approaches to education and skills development could improve innovation across many industries and communities, but organizational secrecy prevents this. This market culture is not free but historically designed more narrowly and feudally, rather than for creating a world where science and democracy are more effectively related

and market driven in the interests of future generations. We face prescientific, lawyer driven markets, without stable, reliable bases for innovation. (Move on, for Christ's sake!)

Are there alternative frameworks that may be useful in the process of policy analysis and development in regard to innovation?

Yes. The first principle of the UN Declaration on Environment, signed in 1992, is that humans are at the centre of concern for sustainable development and entitled to a healthy and productive life in harmony with nature. At the 1994 Asia Pacific Economic Cooperation (APEC) summit, national leaders agreed to an Asia-Pacific free trade zone by 2020, and to protect health and the natural environment. A recent Australian report stated that coordinated governance structures are essential which can translate the vision of health and sustainability into targets, and to plan, implement and review the programs that will achieve those targets (Standing Committee on Environment and Heritage, 2005). The sustainable development of all services to achieve the general international or regional sustainable development goals is ideally considered in community and related industry contexts. From this perspective, the governance emphasis should be on the clear separation of policy and administration, with the former driving competitive, transparent, service provision (Rich, 1989; Hilmer, 1993) so all may identify comparative outcomes.

Peter Wilenski (1986), the Australian and UN public service reformer, described the early Chinese Communist approach to development as seeking the integration of health education and health work into the overall political and economic development climate of the nation. He admired the mobilisation of a large labour force to carry out the slogan 'Put prevention first' in regard to environmental health tasks. He noted the break-up of the medical monopoly over health tasks, and the creation of new health service delivery models specifically designed to meet the needs of the people. A renewal of this once familiar Chinese approach within more recently developed market economies might now be productively undertaken to achieve the global control of greenhouse gases, piloted by the worst polluters, with government assistance. This is logically assisted by supporting the use of key information technology developments which have occurred since the 1980s and the open curriculum approach to education that I suggested earlier. The aim would be to identify and prioritize treatment of a wide range of industry and community sustainable development problems, on an open project and contract basis, joined openly with others.

In his recent US discussion of the links between research, creativity and economic performance, Florida (2003) followed Drucker (1993) and Bell (1973) in suggesting that productivity increasingly depends on rapid and continuing skills development and knowledge dissemination, rather than on traditional approaches which guard intellectual property but do not exploit it effectively in the organizational interest. He argues that all traditional cultures over protect intellectual property. The Boyer approach to scholarship (1990) has support in Australia (Senate Employment, Workplace Relations, Small Business and Education References Committee, 2001, p.211). The Boyer model seeks to integrate teaching and research activities and distinguishes between four forms of scholarship. Discovery creates new knowledge. Integration puts it in an intellectual context. Application applies it in useful ways for individuals, industry and institutions. Teaching facilitates student learning and developing scholars in these areas. The Health

and Medical Research Strategic Review (1997) stated Australia should develop a focus on the prioritised creation and assessments of interventions and policy. Adopting definitions from the World Health Organisation (WHO) it stated the national research effort should take three forms. Fundamental research should generate knowledge about problems of scientific significance. Strategic research should generate knowledge about specific health needs and problems. Research for development and evaluation should create and assess products, interventions and instruments of policy that seek to improve on existing options.

Sustainable development and the control of environmental problems can be most easily conceptualised in related regional industry and community contexts. The control of greenhouse gases may be lead by major polluters in regional industry, government and community partnerships which also follow the market for alternative offset investments aimed at sustainable development. The Senate inquiry into the National Greenhouse and Reporting Bill (2007) notes that there are fifteen commonwealth, state and territory programs with greenhouse and energy reporting requirements. This provides an opportunity for an investigative baseline audit of major polluters in order to establish the foundations for a related carbon pricing and permit trading scheme and for better related innovation and development in the future. I recently put this audit proposal in response to the Department of Climate Change Regulations Policy Paper entitled 'National Greenhouse and Energy Reporting System' (Feb. 2008). My response also considered the National Greenhouse and Energy Reporting System Discussion Paper entitled 'Technical Guidelines for the Estimation of Greenhouse Emissions and Energy at Facility Level (Energy, Industrial Process and Waste Sectors in Australia) (Dec. 2007).

I greatly admired the thoughtfully defined clarity of the Department of Climate Change Regulations Policy Paper. However, I thought the draft 'Technical Guidelines for the Estimation of Greenhouse Emissions and Energy at the Facility Level' are inadequate to implement scientific requirements. I guess the Technical Guidelines have largely been produced by gathering together existing technical measurement expectations outlined in existing regulations and putting them together as if this could also provide the last word in scientific implementation of the National Greenhouse and Energy Reporting System. The technical guidelines are not yet clear, lack key definitions and are flawed scientifically. Measurement of 'indirect' emissions poses many related problems.

I think that further industry consultation on many of the matters the Technical Guidelines deal with must be pursued to align the polluting organization's expected technical input more clearly with the scientific objectives of measuring greenhouse gas emissions. This will assist government evaluation of the appropriate value and number of permits provided to major polluters, prior to establishment of the carbon permit trading scheme. This will also assist major polluters to invest as productively as possible in reduction of greenhouse gases at the business source, or to undertake investment in offsetting greenhouse gas reduction programs in other communities. The preliminary investigations and related consultations on all the above matters could be done during an immediate, experimental, audit process based on the Regulation Policy Paper and Technical Guidelines, to test both approaches practically, with industry, as soon as possible.

I therefore recommended that the Department of Climate Change Regulation Policy Paper ought immediately to be turned into a National Industry Code of Practice, to be implemented immediately by industry as a research project. I am fearful that if lawyers and less knowledgeable politicians get their hands on such an excellent Regulation Policy Paper, they will want to destroy it with a thousand cuts, if they think it does not conform to their less practical, old fashioned, black letter, prescriptive, views on legislation. Turning the Regulation Policy Paper immediately into a National Industry Code of Practice and implementing it as an industry research project would also allow the technical side of the Energy Reporting System to be more consultatively and openly worked upon through testing and report. This ideally occurs through a baseline experimental audit of greenhouse gas emissions. The Regulation Policy Paper states that an external audit will be undertaken by an external auditor who may use an audit team. However, nobody who represents the registered corporation can be a member of the audit team. I think this is wrong and recommended that a member of a registered corporation should be present on the external audit team to inform it about any source of confusion. I think this promotes mutual learning and less vague, more informed reports by external auditors, who also cannot escape their responsibility for producing the final report.

The suggested Department of Climate Change process, on the other hand, is more likely to lead to lawyers, rather than to mutual education, if the auditors make an unavoidably ignorant mistake in relation to an organization's operations and the latter then takes understandable umbrage and calls in lawyers. Then both sides may go into their secretive bunkers, until all come to court. Everyone can learn and fix mistakes quicker and cheaper without lawyers if everyone shares a more communicative, investigative approach which aims to reduce greenhouse gas emissions through scientific and competitive approaches to activity and investments with greenhouse gas reduction and all related sustainable development goals in view. This chance for investigation and consultation also assists a new, more stable, market foundation on which further industry and community research and investment can be more logically and productively built.

I have previously rejected the Australian Greenhouse Office (2007) approach to risk management which expects that individual businesses will first estimate the potential effects of various climate change scenarios on their business units. This is extremely difficult to do technically and also appears to be very far removed from the central task of business improvement. I follow instead the risk management perspectives of state occupational health and safety acts, the national perspective on health promotion, and the concept of action research, which all require that administration is conducted consultatively and as experiment. Large polluters should first identify and measure their own greenhouse gas emissions, in order to develop strategies for reducing them, and also consider less direct ways of reducing greenhouse gases through greenhouse offset programs conducted with other communities, like those working in farming, agriculture, local government or housing (See attached related discussion on the Illawarra region).

Similar risk management processes may be conducted in any industrial or regional community. In the former case one first describes the operation and its broader context. One then identifies and prioritizes the major risks to air, water, land and related

biodiversity which arise as a result of the organization's production. Risks are ideally prioritized for future treatment according to their severity and frequency. Programs to control risks to the environment created by the organization are then set up. Alternatively, the organization may invest in the control of climate change risks which are identified in surrounded communities. The requirements for identification of 'indirect emissions' and risk management must be agreed upon before this can occur in a logically related fashion. I support the directions begun in the 1980s in relation to community health and safety. Bring on the superannuation; get down to educating the market. (That is where I come in.)

GARNAUT CLIMATE CHANGE REVIEW PAPER 2: FINANCIAL SERVICES FOR MANAGING RISK: CLIMATE CHANGE AND CARBON TRADING

Issues Paper 2 of the Garnaut Climate Change Review entitled Financial Services for Managing Risk: Climate Change and Carbon Trading states that the paper follows the second of a series of public forums held in Sydney on 31st October 2007. These were not public forums. I was not invited to either although I made a submission on the first Garnaut Climate Change Review Paper. I had to find out everything about the October 2007 event from reading the newspapers and when I contacted the Garnaut Review to ask for the relevant paper my requests were ignored until I also sent a copy of the request to the Department of Climate Change and the relevant ministers. I have no problem with Professor Garnaut holding a meeting with the financial sector. I most decidedly have a problem with his calling this a public meeting when it so obviously was not. What am I, chopped liver? The Productivity Commission would not do this. Have some respect.

Question for consideration: What is the appropriate burden of risk sharing responsibilities between government, individuals and the insurance industry?

Issues Paper 2 gives the impression that insurance companies are more interested in making money for their companies through trading the funds they may become lucky enough to underwrite, instead of effectively fulfilling their related business commitment to manage insurance claims effectively. They appear to have become obsessed by financial trading. Although the paper appears to assume that the insurance industry should underwrite the funds related to the risk of managing climate change, it definitely should not, for the reasons outlined below and others discussed in related papers attached.

It seems likely to be impossible to decide whether any extreme weather event which happens is the result of global warming. Those familiar with workers compensation insurance will be aware of a similar work related problem, which is that it is often impossible to determine if a person's bad back has been the result of their work routine or a range of other factors. This uncertain situation often creates a lawyers' picnic where the managers of any insurance fund protect their funding pool with lawyers who treat the fund as if it were money for the company shareholders' purposes. Then the lawyers of any plaintiff may take those who manage the insurance fund to court. The major winners in this structure are the lawyers on both sides of the case and also the insurance companies. The latter can invest the premium funds they underwrite on their own behalf and take the income for their company shareholders. Making money for their company is their primary goal. This is a poor structure for protecting the broader public interest. Innocent bystanders often bear the costs of their greatest financial successes and failures.

Insurer underwriting and competition on premium price also create a situation where high insurer profits are required to create a buffer against insurer insolvency, and yet insurers may become insolvent as a result of fierce premium discounting and market downturn, any unexpected calamity and related losses in court, or for other reasons. Governments and many others may pick up a large part of the bill for this. A related problem for

Australians who adopt any private insurance company underwriting model is that insurance companies operate internationally, so that Australians may find themselves bearing higher premiums because of an extreme weather event in another country. Australians can and should control their own risk of fire, flood, etc. but they would be foolish to become caught up in subsidising, through insurance, the costs of catastrophes in other countries, especially where low taxes may mean that those governments do very little to protect their populations from catastrophe or help their rehabilitation afterwards.

The court process provides no data for effective premium setting. This also undermines good management of all work and welfare systems which must interact with the court. Australian historical experience of health insurance and workers compensation schemes shows it would be better to have funds for managing climate change underwritten (owned) by government, industry and communities, with the fund ***administration*** privatized**.** Then the fund owners can compare the performance outcomes of all related public and private sector administrators and service providers. All injury prevention, rehabilitation, compensation, fund investment and related services are ideally managed openly and competitively so service outcomes can be identified comparatively, on a related industry and regional basis. Why give industry and government funds away for private sector insurers to reap the benefit of their investment on their own behalf? In a good fund management model, premiums are reduced by handling risks and injuries better, and investing productively, not by shifting the cost of risk onto others. A market driven approach to insurance underwriting supports unlimited financial protection for risk takers who appear able to pay the premiums required for protection from their risk. The assumption of risk can also be contracted out freely to other investors in the market.

Insurance to manage the risks of climate change ideally is instead a form of social insurance. A suitable management structure is addressed in more detail in the attached article entitled, 'Recent Australian perspectives on health and social insurance'.
The Australian government risk management ideal in regard to climate change and its effects would be to design insurance and related financial services to achieve more sustainable regional development. This in turn requires more open and therefore effective, competitive management and investment of all public and industry owned funds, to achieve key national goals, driven first by the identification of major greenhouse gas emissions. Ideally, all other business costs are reduced as a result of designing these more openly competitive industry and community investment processes. This structure also cuts all future, unknown costs of risk re-insurance and flattens the underwriting cycles which produce business volatility and its added costs.

Question for consideration: To what extent, and on what basis, might it be desirable that permits are not allocated via an auction system?

From the Australian government, industry and regional community perspective, the point of introducing carbon trading is so that the risks of climate change are dealt with as effectively as possible within a specified time frame, not so that insurance company shareholders can make money. Yet paper 2 does not discuss the ideal relationship between greenhouse gas permits and insurance premiums. What is it? From the public

interest perspective, insurance should support competitive national, regional and internationally planned programs for sustainable development. It should not primarily give incentives to insurers to try to make money for their company shareholders.

From the perspective of the public interest, insurance premiums and carbon trading permits must be logically related. Greenhouse gas risk prevention, environment rehabilitation, compensation and all related development functions must normally be managed effectively through openly competitive, stable and low risk fund investment. The funds should be owned by Australian government, industry and communities and managed in order to reduce all regional problems related to climate change. This is most sensibly undertaken by putting the control of the apparently worst risks first, on an industry and related regional community basis. A preliminary industry audit undertaken in cooperation with the Department of Climate Change in accordance with its Regulations Policy Paper entitled 'National Greenhouse and Energy Reporting System' (Feb. 2008) would be a good beginning. (Also see attached discussion of pollution control in the Illawarra. My first submission to the Garnaut review also discussed offsets.

Ideally, Australian governments, industries and their related regional communities need to invest in the control of clearly identified risks to the environment in Australia and elsewhere in a way which is not driven primarily by the insurance company shareholders' desire for profit. The latter leads to a socially dysfunctional choice of financial risk control and to a perversely related treatment of investments. The United States health care system provides many examples of this problem. Insurance companies cater to the rich health care consumer's needs and to their related research interests, in order to reap most potential profit, while the poor and their problems can go hang. There is no money in control of dengue. The problems of the poor can probably be best resolved through the financial controllers being provided with very large economies of production scale. Australia government, industry and communities should logically seek to work with Chinese government, industry and communities and with other willing countries to resolve all related problems. (See attached discussion on how this may be conceptualized and undertaken to protect health in Chinese or related industry and community contexts.)

Ideally, greenhouse gas permits represent taxpayers' money which is provided to industry and the community on a related regional and industry basis to address the environmental problems caused by greenhouse gas emissions. This is ideally implemented through risk management processes which first identify and then seek to deal with the worst risks to communities and environments, prior to dealing with those of the second order. Level of risk is normally estimated by its potential severity and its frequency of occurrence. Government provision of permits to a polluting organization should reflect the level of risk to the environment its emissions pose. This is a scientific treatment of permit provision. Auctioning permits undermines any scientific measurement of risk and its management. Provision of permits must also be designed to support the Australian Government's key aims of fighting inflation first and achieving sustainable development fairly. I don't understand the potential effects of any permit introduction on inflation.

In general, however, the more governments, the biggest polluters and communities put into an early, joint premium/permit fund to address problems related to climate change the better, as long as the money is well managed to achieve the desired triple bottom line results – economic, social, and environmental. Fund management is ideally open, consultative, and designed scientifically to achieve the goals of sustainable development through open service competition. On the other hand, the primary goal of the private sector insurance company is shareholder profit. This provides perverse incentives from any perspective that values the public interest in sustainable development first, because it is driven overwhelmingly by competition on premium price and opaque trading to meet management and shareholder interests, until the market inevitably turns and bites back. The social insurance perspective instead can stabilize the market and reduce its costs.

The financial sector needs to be broadly and effectively controlled by government, industry and communities or few except the comparatively rich will benefit effectively. (See attached discussion on financial service and development issues from a consumer perspective.) Insurance premiums and/or clearly related permits for carbon trading must first be risk rated on an industry and related community basis. This can be introduced by a baseline research audit of the worst polluters. Permits for carbon trading should then be allocated to industry by government in a suitably coordinated and openly managed fashion. Otherwise it will not be possible to carry out any greenhouse gas related rehabilitation or compensation functions, let alone any greenhouse gas injury prevention functions, effectively and scientifically. Deal with the worst identified problems first.

In order to get the biggest bang for buck in regard to the provision of greenhouse gas prevention program and related regional offset program planning, it seems logical for government first to provide the biggest polluters with the relevant number of permits. This will then enable their organization to begin control of its emission risks or to become involved in related regional and community offset schemes. The aim is to manage the risks of climate change in a way which also achieves all related regional government, industry and community sustainable development objectives. This also provides an opportunity to introduce triple bottom line accounting. From the perspective of the public interest, this recommend system appears to be the only one which is consistent with the achievement of sustainable development as quickly, scientifically, competitively and effectively as possible. Permits are managed incentives to change.

Ideally, the appropriate premium, permits or carbon credits associated with greenhouse gas emissions must first be established in regard to the biggest polluters. The level of noxious emissions an organization is delivering into the environment must be estimated, in order to reduce them at their source, to invest in offset activities instead or to do both. One therefore must first consider the Department of Climate Change Regulations Policy Paper entitled ‘National Greenhouse and Energy Reporting System’ (Feb. 2008) and the National Greenhouse and Energy Reporting System Discussion Paper entitled ‘Technical Guidelines for the Estimation of Greenhouse Emissions and Energy at Facility Level (Energy, Industrial Process and Waste Sectors in Australia) (Dec. 2007). (See attached related comment on how large polluters should measure their greenhouse gas emissions.)

As a result of reading the above papers, I recommended immediately turning the Regulation Policy Paper on a National Greenhouse Energy Reporting System into a National Industry Code of Practice and implementing it as an audit based industry research project. This would also allow the technical side of the Energy Reporting System to be more consultatively worked upon and tested. This ideally occurs through experimental audit and report. On page 8, the Regulation Policy Paper states that an external audit will be undertaken by an external auditor who may use an audit team. However, no individuals who represent the registered corporation can be members of the audit team. I think this is wrong and recommended that a member of the registered corporation should be present on the external audit team to inform it about any source of confusion. I think this would promote mutual learning and lead to more informed and less vague reports by external auditors, who also cannot escape their responsibility for producing the final report. This would mean fewer mistakes and fewer lawyers. Once an industry audit of the largest polluters has been undertaken, the level of risk their emissions deal to the surrounding environment can be more clearly and appropriately estimated for government to match in some logically related fashion, through the provision of permits for investment in offset programs. The concept of 'indirect emissions', who should measure them, and how, requires much more clarity.

The issue of how much money is made available by industry and by government for sustainable development related premiums and/or permits or carbon credits to attain sustainable development is ideally considered in the light of all the concerns addressed earlier. What major risks must be controlled? How and in what time frame? What will it cost? Establishing funds to invest in remedies is integrally related to knowing this.

Question for consideration: Does the insurance industry have the capacity to provide adequate and affordable insurance products in a future of climate change?

In its quest for increasing market share, the traditional insurance industry underwriter has an incentive to produce as many products as possible in an attempt to meet a differentiated market. However, the insurance industry shareholders also have an interest in ensuring that their products are opaque and compensation is hard to access. This increases costs to premium purchasers and to end users of the products. For evidence of this one only has to compare US health care provision with that in Europe, Canada or Australia. The US provides comparatively expensive health care driven by the rich consumer, and the poor cannot afford insurance cover. Climate change and carbon trading systems designed on the US model will increase social and environmental extremes and problems not reduce them. A planned and competitive approach to control of regional risks is required instead.

FROM THE CONSTITUTIONAL PAST TO THE NEW EDUCATIONAL IDEAL

It's a very ancient saying, but a true and honest thought
That when you become a teacher, by your pupils you'll be taught
Rodgers R. and Hammerstein O. 'The King and I' (1956)

Continuing Problems of the Australian Constitution

Australian governments support the new international governance paradigm discussed later. From this perspective, good governance normally requires clear separation of government policy from its administration, with the former driving competitive, transparent, service provision (Rich, 1989; Hilmer, 1993) so all may identify a range of economic, social and environment related outcomes. 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 a related budget. All activities are monitored and their outcomes are measured in the light of general aims. Unfortunately, the Senate Committee report of inquiry into transparency and accountability of Commonwealth public funding and expenditure (2007) ignores program budgeting. It recommends complex additions to the existing budget process which are likely to add to current budget opacity and all related cost. The committee concludes 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 health and 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 a British governance model in which elected politicians, administrators, and the judiciary are seen as separate, independent governance pillars. Broader, more up to date, flexible and cheaper education is vitally necessary to bring about community understanding and change. Closed higher education subjects do not meet Australian or international sustainable development goals effectively. New, open education models for public sector, community and industry management are vital for the future. This is the supporting case for a linked and open approach towards education for health, sustainable development and human rights.

Before federation in 1901, six Australian states were self-governing colonies each with a Constitution through an English act. The federation aimed at uniform rules and free trade throughout Australia. However, its form has meant complex over-regulation, general lack of transparency and many other costs which are often driven by a feudal, prescientific, monopolistic, legal culture. The reader of the Constitution finds clear rules about how Australia should be governed. Nevertheless, the Constitution is a law about administration, with Commonwealth and state policies subject to it. This inhibits and deforms all future law and policy making. State parliaments can pass laws on a wider range of matters than the Commonwealth, but the Constitution provides that if a

Commonwealth law is inconsistent with a state law, the former overrides the latter. The High Court is the highest in the land, and also decides disputes about Constitutional meaning. Constitutional requirements about administration thus dominate all other decision-making structures. Many laws have been rendered incomprehensible, inconsistent and illogical by time and the related piecemeal amendments which court actions have brought about in statutes. However, the Constitution has hardly changed. This requires a referendum. The Constitution has outlived its usefulness and should be ignored whenever necessary. Australians should learn from recent international experience, which is discussed later.

The Australian community thus faces central problems of administration driving policy and the power of the court monopoly. The adversarial interpretation and application of the letter of particular law, rather than the resolution of presenting problems within a broader environment, minutely regulates the responses of those in the legal arena. Lord Woolf said of English law that besides being incomprehensible to many litigants, 'above all it is too fragmented in the way it is organised' (NSW Law Reform Commission, 2004, p. 25). Courts normally take a 'black letter' approach to law which means it has no aims, its prescriptions are ideally followed exactly and there are no definitions of key terms. Legal 'interpretations' far less useful than those in a dictionary, exist instead. Alleged breaches or related disputes are ruled upon in courts where adversarial lawyers plan their arguments secretively and according to investigation and evidence presentation rules originally developed in feudal England, to provide for a fair fight. Legal 'privilege' is a central concept justifying denial of information. The assumption appears to be that the lawyer may conceal or mould what his client knows is true, to maximise his interest in revenge or escape from any guilty judgment and its consequences. From a scientific perspective this is fraudulent behaviour. The oppositional approach to presentation of expert evidence is expensive, encourages bias and silences many who might wish to be heard, while often turning science into junk. Lawyers are prohibited by their learned vocation from an understanding of a whole of government approach to the attainment of community interests, let alone a sympathetic implementation of them. Courts provide little or no data to assist more scientific approaches to community or industry management. The legal fraternity do not systematically classify cases or study outcomes of a broad range of apparently related judgements, to gain better understanding of outcomes for groups or individuals so as to promote better injury prevention, rehabilitation, premium setting or better law and policy in future. Scientific principles are instead overruled by feudal ones that lawyers spend years learning in universities. No wonder many countries are sensitive about their education and related human rights curricula (Joint Standing Committee on Current Affairs, Defence and Trade, 2004, p.65).

Neither the Australian Constitution nor other law has any equivalent to the Bill of Rights in the earlier US Constitution, which prevents a legislature passing laws that infringe certain freedoms, supposedly given by God. The Constitutional form of Australian government supposedly represents 'the sovereignty of the Australian people' and superficially may appear to be agnostic. Section 114 states that the Commonwealth must not impose any religious observance or prevent the free exercise of any religion and no religious test should be required for entry to any office or public trust. However, the

Constitution actually appears to stand for a Supra-natural Power, which takes a prescientific approach to all development. How else can the supreme authority of Its word over all other law made by the contemporary community or future generations be explained? This is an authoritarian rather than scientific or democratic approach. History suggests each generation is generally more informed than the previous one and ideally should correct past mistakes in the light of new experience. This is not possible under the Constitution, which keeps Australia looking backwards. In the legal paradigm, the words 'just' and 'justice' are also different from 'fair', and synonymous with access to the courts, (Commonwealth Attorney General's Dept., 2002, p.195), as if the lawyers' monopoly and their adversarial methods entail perfection. This anti-historical approach may be contrasted with recent, holistic and scientific approaches to apparent breach of statute and dispute resolution, which are championed by Sir Lawrence Street (2002) and many others (NADRAC, 2001; Strang and Braithwaite, 2001; Braithwaite, 2002).

The New International Governance Directions

A better designed, international, national or local model of governance from almost any scientific or cultural perspective is now emerging. Foucault (1997) has described this broadly scientific and democratic ideal as 'the politics of truth' and saw it as first expressed by Kant, in the European Enlightenment. It developed faster after the failure of fascism and the related atrocities of World War II led to the establishment of the United Nations (UN). The new regulatory model is based on the 20th century ideal of universally guaranteed standards of living which also place fair treatment, wellbeing and the guardianship of natural resources for future generations at the centre of all development. Program budgeting, as discussed by Wilenski, is central to this process. Australia should be at the forefront of this scientific approach to sustainable development which is ideally guaranteed by law. It is held back primarily by the Constitution, its keenest upholders in central government administration and professional monopolies. Related national competition policy problems are discussed later in this context.

Key international, democratic, governance concepts which Australia has adopted into a variety of legislation, are based on the UN Declaration of Human Rights proclaimed by the newly established UN General Assembly in 1948, after the atrocities perpetrated during World War II. The Declaration states that all human beings are born equal in dignity and rights without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. All are also declared to have the right to a standard of living adequate for health and well-being. The UN Declaration, or 'Bill of Rights', is implemented through the Covenant on Economic, Social and Cultural Rights (ICESCR) and the Covenant on Civil and Political Rights (ICCPR). The former deals with fair wages and equal remuneration for work of equal value; safe and healthy working conditions; equal opportunity; rest, leisure, and working hours. It also deals with community service standards for family wellbeing and specifies international rights to education and cultural freedom. The ICCPR addresses rights to freedom of movement, equality before the law and freedom of thought, conscience and religion. It also discusses the right to freedom of opinion and expression, peaceful assembly, freedom of association, participation in public affairs, and

the protection of minority rights. Governments signing up to UN agreements ideally commit to laws which provide the means for implementing their principles. These may be seen as a state guarantee of national minimum standards of wellbeing for all, albeit delivered in highly varying economic and cultural environments. From this perspective, providing justice is like providing other services, such as health care or education. Services ideally have clear aims and are administered consultatively and comparatively.

After the Nazi defeat, the Nuremberg trials produced a vital Code which expressed the new international awareness that narrowly driven views of scientific experiment may make total destruction as likely as improved wellbeing. The Nuremberg Code stated all those involved in research must be properly informed and have the power and moral responsibility for autonomous speech and decision. The first principle of the Code states:

> The voluntary consent of the human subject is absolutely essential. ……. The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to others with impunity.

Code principles should be applied in any broadly scientific approach to individual or community management, as well as in medical experiments. Broader community education rather than professionally driven ethics committees are needed in this context. The latter may just produce costly red tape. A recent discussion paper on the protection of human genetic information by the Australian Law Reform Commission and the National Health and Medical Research Council (2003) concluded ethical inquiry is consistent with scientific inquiry, in that it is centrally concerned with the kind of procedures or discussions that allow all relevant sources of information and viewpoints on a disputed matter to be taken into account in coming to a decision. Ethical judgment, like scientific inquiry, is ideally an ongoing activity for all, since community life is continually developing, along with knowledge and related conceptions of truth. This inclusive approach to ethical judgment also requires much greater recognition of the need for informed participation of communities in all service provision. It also requires educational approaches which recognize the subjectivity of all, including that of any researchers who prefer to think of themselves as above the fray gripping those below.

The World Health Organization (WHO) has widely promoted broadly coordinated, scientific, approaches to managing all social administration since 1986 when the Ottawa Charter stated that necessary health supports include peace, shelter, food, income, a stable economic system, sustainable resources, social justice and equity. The Charter called for development of public policy, reorientation of health services, and community action to support health goals. The WHO program aims to increase the span of healthy life so that the disparities between social groups are reduced. In 1992, the first principle of the Rio Declaration on Environment agreed to by UN members was that humans are at the centre of concern for sustainable development and are entitled to a healthy and productive life in harmony with nature. At the 1994 Asia Pacific Economic Cooperation (APEC) summit, national leaders agreed to create an Asia-Pacific free trade zone by 2020, and to protect health and the natural environment. Ideally, regional environments are examined to

identify and manage key risks to community and environment wellbeing. In this context, the industry and community approach to management and related education ideally starts with teaching key skills and management principles for the identification, prioritization and control of community and environment problems, in order to devise effective injury prevention and rehabilitation solutions for the future. This is partly expected already in Australian industry as a result of state occupational health and safety acts which provide employers and workers with a duty of care and require the identification and control of work related risks. Open and broader educational support is needed for this approach.

The United Kingdom, Canada and New Zealand have enacted human rights legislation, but New South Wales and most other Australian states have not. The concept of a'Bill of Rights' is highly problematic in Australia's existing legal context, which is colonially based on ancient, English common law and adversarial methods. This means that very broad educational approaches to human rights implementation appear naturally better than those driven by lawyers who appear likely to wish to preserve their dominant court powers and occupational monopoly. Australian governments have recognized that individual rights are ideally balanced by responsibilities to the communities which extend them. Varying historical environments may produce sharply conflicting ideas about how to achieve the freedom of the individual from state interference on the one hand, and the stated right to community protection and to equal treatment on the other. In the US, for example, the Constitution protects and so encourages gun ownership, but voting in elections is voluntary. Australian law bans most gun ownership but voting is mandatory. These moral differences also suggest that implementation of legalistic approaches to human rights will breed major anomalies and costs.

On the other hand, all can agree that community and environment health involves diverse life flourishing, and set up broadly scientific methods to achieve it, as long as they are taught some basic principles first. Differences in cultural interpretation of human rights may be dealt with more productively if community health and sustainable development are primary goals, and the rights and responsibilities of the individual are debated and constructed broadly in this context, through continuing education, communication and debate. All community management and related services are ideally built on this foundation. The process requires systematic information collection on case and program performance and outcomes, which is undertaken in partnerships between government and communities, the private sector or voluntary organizations. Data driven management is ideally designed to achieve health, sustainable development and better policy formulation on a continuing basis. As the Standing Committee on Environment and Heritage report on sustainable cities (2005, p.20) pointed out, coordinated governance structures are essential which can translate the vision of sustainability into targets, and to plan, implement and review the programs that will achieve them. Doing so requires broad education, management openness and service transparency, not secretive dealing.

Hindrances to Australian Governance, Competition and Consumer Principles

Australian acceptance of the new international governance paradigm was clearly signalled in 1990 when the Council of Australian Governments (COAG) agreed anew to

implement a single, national regulatory environment. This was immediately after the states had begun an examination of all legislation to update it and make requirements plain. The COAG passed legislation requiring mutual recognition of all Commonwealth and State laws and continuing review of legislation, in order 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). Competition was to be designed upon this national platform of standards, with the aim of equal treatment for the private and the public sector service provider, unless another course of action appears to be in the public interest. Against this logic, freedom of information principles have so far been applied only to the public sector. Perfect information appears vital for perfect competition, as it does for perfect accountability, democracy and risk control, but is resisted. For example, the purchaser of higher education usually has little way of knowing what it consists of until it is completed. More open education would be more productive (Florida, 2003).

In 1993, Hilmer's report to Australian Heads of Government after an independent committee of inquiry into a national competition policy, defined 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). The earlier Trade Practices Act (TPA) 'interpretation' of competition currently states that, 'competition includes competition from imported goods or from services rendered by persons not resident or not carrying on business in Australia'. The TPA does not define key terms, but 'interprets' them instead. People wondering what a 'covenant' or 'debenture' is may find themselves no wiser after reading the TPA interpretation, than before. Dictionaries would be better guides for everybody than legal interpretations and reduce legal and related cost. Hilmer 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 o facilitate more effective competition or to attain other social objectives considered to be in the public interest. Hilmer stated that the Commonwealth, State and Territory governments had earlier agreed on the need to develop a national competition policy which would give 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

© 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 into new competition law. They are clear and imply the reasonable view that the unregulated market does not always work infallibly in the common good. However, the way below was chosen to implement the Hilmer Report instead. Although the report addressed consumers only in relation to boycotts, it led to the passing of the Competition Policy Reform Act (1995) which had the stated object '**to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection'.** The implementation of the Competition Policy Reform Act was principally by making amendments to the TPA. The Australian Competition and Consumer Commission (ACCC) was set up to preside over competition concerns.

In the light of the Hilmer Report, all these steps appear wrong. This indicated that the early Australian legislative approach to competition followed the US Sherman Antitrust Act of 1890 which stated that all 'unfair' business 'monopolizations' and 'combinations' are against the national interest. As JK Galbraith pointed out later, 'To suppose that there are grounds for antitrust prosecution whenever three, four or half a dozen firms dominate a market is to suppose that the very fabric of American capitalism is illegal'(1952, p.68). He also pointed out that this has never discouraged the briefless lawyer. The TPA has developed on a similar basis of early legal assumptions about the market being composed of traders whose interactions, when ideally free from government interference or other monopoly influence, naturally benefit the whole society. This is a highly questionable economic proposition, unsuitable for legal reification. Neither are consumers recognized as a subset of traders in this theoretical framework. The comparatively recent concept of the 'consumer', suggests that many traders may need special protection because of their comparative lack of information about their purchase, or for other reasons such as their comparative lack of money, opportunity or related bargaining power. After the Hilmer report, consumers were specifically addressed in a new section of the TPA. This and state fair trading acts now have long, inconsistent and narrow definitions of a consumer.

When studies of health services, education and many other industries discuss consumers, they mean the purchasers or users of a product or service and the term 'access' usually relates to the availability of this to all potential purchasers or users. However, when the TPA discusses access, it normally means access of traders to the market. A growing list of newly added matters related to specific industries is now making the TPA increasingly long, inconsistent and expensive to implement. In its inquiry into telecommunications competition regulation, the Productivity Commission (PC) returned to Hilmer in questioning the economic principles which the lawyers in the ACCC appear to be

pursuing, as a result of the form of implementation of the Hilmer Report. The inquiry concluded there is an inherent difficulty in defining anti-competitive conduct in an objective sense and it is not possible to undertake a full benefit cost analysis of the merits of anti-competitive conduct regulation. It stated lack of transparency in the TPA also limits the ability of telecommunications providers and the community to analyse and comment. 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 is also justification for the planned, government, industry and community approach to competition proposed in this article. The problems of an overcrowded market were faced in NSW in 1987 when the WorkCover Scheme was introduced after the collapse of five out of over forty insurance companies underwriting workers' compensation and competing on premium price. Government and industry paid for this failure. Under the WorkCover Scheme, government and industry own the premium fund and set rehabilitation benefits and premium levels. Twelve insurance companies are licensed to manage the scheme competitively, with oversight by the WorkCover board. Insurers compete primarily on their ability to assist injury prevention, rehabilitation and fund investment, rather than premium price cutting. This structure promotes general economic stability as well as cost containment. The premium fund is retained in industry and government ownership, not given away. This seems a sensible injury prevention and rehabilitation model for future industry and community developments to reduce risks to the natural environment as well as to workers, consumers or communities. Education and research are ideally designed competitively to meet needs identified through evidence and key stakeholder consultation.

The above approach to controlling work related risks to health is consistent with UN and International Labour Organization conventions and also with the WHO and Australian approach to health promotion. As Duckett (1997) pointed out in regard to heath services, the Medicare monopoly has protected the health of Australians more broadly, equitably and cost-effectively, in comparison with the experience of US consumers of private health care. Would economists think that this makes Medicare a natural monopoly? From industry and related consumer or community perspectives, the government allocation in 2006 of two new digital television services *'for new and innovative digital services rather than replicating traditional television services'* should now presents welcome new educational opportunities, of the kind already discussed by the Joint Standing Committee on Foreign Affairs, Defence and Trade (2003) in its report on human rights, good governance and education in the Asia Pacific region. The best management structures for educational TV, radio and supporting entertainment are worth inquiring into in the related light of continuing skill shortages, the current high cost of tertiary education, and the need

to promote general understanding of new international and national management approaches, as well as sale of other Australian products and services.

However, the need for an Australian paradigm shift to implement the Hilmer Report and related consumer, health and sustainable development goals remains. In its report of inquiry into telecommunications competition regulation, the PC (2001, p. 40) defined 'access' in relation to services providers in the market, rather than in relation to the ultimate program consumer, even though the treasurer had specifically stated that the review should, 'Have regard to the established economic, social and environmental objectives of the Australian government' (PC, 2001, p.v). The PC stated that an **access regime** is:

> 'a set of regulatory arrangements governing the rules by which one party is obliged to provide its services to other parties, even if it does not wish to do so'.

TV program watchers do not exist in this formulation in spite of the fact that the PC (2001, p. 145) stated that the main way in which pay TV providers compete is via content and that 'content is king'. In its discussion of new television licences, the ACCC (2006) later stated that **access** is interpreted in the newly inspired section 118A of the Radiocommunications Act, as:

> '**Access** to services that enable or facilitate the transmission of one or more content services under the license, where **access** is provided for the purpose of enabling one or more content service providers to provide one or more content services'.

Because of its historical background related to government ownership and nation building, Telstra accounts for around two thirds of total communication services revenue. The carrier has also been called the biggest consumer of legal services in Australia (PC, 2001, p. xxv). Yet in spite of many declaring that program content drives the communications industry, neither the ACCC nor others currently inquiring into new television broadcasting licenses appear interested in the most desirable TV content. The ACCC presides over a comparatively dysfunctional, expensive regulatory approach which obtains neither the national interest nor effective competition. Vital skills development, industry and community management needs are also being ignored. Hilmer wrote about the legal monopolies which the professions wield:

> The overwhelming majority of submissions dealing with the professions supported removal of existing exemptions. Proponents of this view included the consumer, business and industry groups, individual businesses and a host of other submitters……..
> Restrictive practices in the legal profession have also been a matter of increasing concern to the community as evidenced by the level of recent scrutiny at State, Territory and Federal levels (1993, p.134)

However, the more things change the more they also stay the same. The ACCC recently stated that it wants even more legal monopoly powers to fight for competition in communication. State professional registration acts also remain one of many problems hindering more transparent and effective approaches to delivering services, including

education, which could be made openly and widely available on TV, radio and computer. Systems for certification of competency to practice are a separate issue for consideration.

Concluding With an Educational Way Forward

Hilmer followed Wilenski, Galbraith and Keynes in extending Weber's perception that the development of bureaucracy requires the progressive extension of more rationally planned, inclusive and competitive approaches to governance, which must also reform law, under the increasing pressures of democratic demand. From this perspective, taxation, mandated insurance or other common funds must also support national community goals and openly competitive administration to achieve community subsistence, health and protection of natural environments fairly. Australia is now embarked upon this new, international governance approach, which is ideally based on national standards for health and sustainable development and better education, service delivery and research to achieve related regional goals. This is currently hindered by the Constitution which prevents effective implementation of scientific, transparent and democratic approaches to management. These require regional health and sustainable development needs to be consultatively identified, prioritised and met using services which also provide data to assist injury prevention, rehabilitation and related budgeting on a continuing basis. Through starting the establishment of open education modules, Australian vocational education systems could be better linked to other higher education and secondary systems to meet the requirements of the communities which should logically support them. More open education and program budgeting are both vital.

Australian government is currently developing a national action plan for education for sustainable development. A duty of care approach to protecting workers, consumers, communities and their supporting environments is also necessary to attain sustainable development in Australia and internationally. This requires coordinated, broadly scientific and open approaches to all problem solving, not narrowly discipline driven and secretive, bureaucratic, professional or adversarial approaches, separated by multiple walls of legal privilege, so nobody really knows what anyone else is doing. If open education content were on an open website it would be available to anybody who had access to a computer and was directed to it, at any time of the day or night. It could also be designed for English and other language learning. Australia universities are currently expected to expand postgraduate education and research. If earlier education content were available in the open manner suggested, then postgraduate students from any country would understand more about what they may be expected to do in self directed post graduate research projects. The quality of education also partly depends on the needs of the learner. Nobody can judge education quality in the absence of full knowledge about its content. Universities are currently devising new and expensive systems to measure education quality, yet appear not to see the obvious need to make education content open. Nobody would ever buy a car in the absence of seeing and driving it first if they wished. Education ideally need be no different in this regard and certification is a separate issue. However, this is not a view to which all teachers appear drawn. To gain the benefits of a competitive economy government should work with those who are.

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Executive Manager, Member Administration Services, UniSuper

Dear Ms Abbott

I refer to my previous correspondence below about UniSuper investment practice and housing policy and to the supporting policy papers attached. In Recommendation 2 the Parliamentary Joint Committee on Corporations and Financial Services Report (2007) suggested that Treasury should conduct a review of laws and regulations governing superannuation to identify how they may be rationalised and simplified. Labor members supported this recommendation and most others in the report. However, recommendation 6 suggested that trustees of superannuation funds should publicly tender key service provision agreements. Labor members think superannuation has been 'governed by the trustee system in a sound and effective manner' and are against the recommendation because it appears to imply broader and 'impractical and unnecessary interference in the internal operations of business' (p. 199).

CURRENT RECOMMENDATION

I previously made the different recommendation below in an effort to resolve this vital disagreement and to try to develop government unity of purpose on superannuation investment policy. However, I think it would be good if UniSuper publicly tenders its key service provision agreements. It would educate the market! What could ever be better for a university superannuation fund to do than that?

PREVIOUS RECOMMENDATION

Key assumptions, definitions and industry descriptions and relationships need to be logically addressed before effective discussion of the simplification of superannuation law, as recommended in Rec. 2, is possible. I recommend addressing these assumptions and related issues first and instead of Rec. 6. Key underlying assumptions regarding the necessity for structural separation of the superannuation fund and its trustee to gain good management practice are unclear. The report describes superannuation funds but also needs to describe their trustees, including their principle aims and relationships, before anybody can make sensible policy. I suspect that the normally expected separation of a superannuation fund and its trustee is an undesirable regulatory anachronism which increases scheme cost and reduces transparency. I therefore recommend that future inquiry should address the aim and related rationale of any requirements that a superannuation fund should be managed by a trustee, 'at arm's length'. When is a separate trustee necessary and why? What exactly should the role entail? The report constantly refers to 'the industry'. This and other key terms and relationships need clearer definition and description before Rec. 2 can be adequately addressed.

Dear Ms Abbott

Membership No. …… Pension Number…… A/c No. ……..

Does Investment in Property really only account for 10% of the Fund?:

In regard to the 2007 UniSuper Report to members, I was interested to read that you only have 10% of the UniSuper fund in property. This seemed strangely low, as I also note that property is a reasonably sized category in the Capital Stable; Conservative Balanced; Balanced and Growth investment baskets (pp.12-13). How can this apparent anomaly be explained and how is level of risk in each of these different investment baskets estimated? How is Australian property valued as a comparative investment, and as compared with property in other countries, e.g the US or China? How is a choice made about which property to invest in? I want to know all this as I am seeking to develop and gain support for the general approach to sustainable development outlined in the policy discussion on housing below and also in the attached supporting discussions of risk management and its relationship to emissions trading. (Towards a triple bottom line.)

The Defined Benefit Scheme and the Accumulation Component:

In the same context, I wonder what exactly is the nature of the pooling and investment in the 'single, diversified portfolio' (p. 12) and how does its performance relate to investment of the accumulation component of the overall investment fund? (I assume the defined benefit division component of the fund uses an actuarial methodology for making pension style payments from the fund whereas the accumulation component of payment is purely market determined, but how do these different investment practices relate to each other in terms of the choice of investment vehicles?)

Thank you for any information. Please see below and attached for the policy context which I hope you will support. Best wishes, Carol O'Donnell, Glebe, Sydney.

YOU ALL HAVE MONEY AVAILABLE FOR HOUSING DEVELOPMENT

It is estimated that Australian households account for around 20% of Australia's greenhouse gas emission (WWF 2006, p.11). Why not meet the 3rd December 2007 deadline for funding applications to be made to the Climate Change Adaptation Skills Small Grants Program funded by the Australian Greenhouse Office (AGO)? This program provides opportunities for those attending yesterday's Affordable Housing Local Government Course organized by the Australian Housing Urban Research Institute (AHURI) and others like them to make applications together or apart. There are many other large funding sources available for consideration now and later in the sustainable housing and related development context, which I discuss below. (I also attach broad discussions of the program and related risk management environment for information.)

For a project to be available for funding under the **AGO Climate Change Adaptation Skills Small Grants Program** the applicant must be:

1. a local council, regional and/or shire council, grouping of councils, and/or coalition of these, OR
2. professional organizations, training organizations and tertiary education institutions or consortiums (sic.) of such bodies

In the first case, the program will provide local government grants of up to $30,000 (GST exclusive) for conducting a risk management process and up to $20,000 (GST exclusive) for developing climate change adaptation action plans using an approved service provider. Please consider me and my attached discussions in this light and also note that the AGO apparently has a long-standing partnership with the International Council for Local Environment Initiatives (ICLEI). In the second case, grants are available up to $150,000 (GST exclusive) for research and education development for professional groups, such as architects, engineers, planners, landscape architects, national resource managers or other specified groups in a way which 'builds understanding and skills for adaptation to the impacts of climate change' or provides related benefits. Check out the AGO website and please consider my attachments in this related light as well.

I think councils, research centres and others eligible should now apply for funds to develop affordable and sustainable housing goals and directions, starting with regional, broadly and openly discussed identification of land, buildings, infrastructure, related management systems and common supporting funds. Plans to meet the requirements of sustainable development and more affordable housing might start anywhere in Australia. I recommend the kind of broad, environment related housing investigation and planning process that Judith Stubbs outlined so clearly for AHURI yesterday, on the basis of her needs identification and planning work on housing, undertaken recently for the Kiamma Council and community. This seemed to me a very practical approach, based mainly on broadly gathering clear local information from those who know. (Unfortunately Powerpoint slides of her process are not yet available. I cannot address elements now.)

Yesterday, Vivienne Milligan of AHURI pointed out that housing affordability is the relationship between the cost of housing and the capacity of the household to pay for it. Housing purchase has become increasingly expensive for people since 1960, and rising household income has not kept pace with rising housing price, especially in the past two decades. As I understood it, Milligan said that housing policy which seeks to reduce the housing affordability problem should be mainly targeted to making housing more competitively priced for those living in the lowest 40% of the total population of Australian household incomes. Many of these people also pay over 30% of income on rent or mortgage payments, thus experiencing housing stress as purchasers or renters.

It appears from the above that housing has, apparently demonstrably, been an area of government policy neglect, foolishness or worse for a very long time. What have government and others done to exacerbate the general housing affordability problem? As Peter Urban, a former chief economist at the Dept. of Foreign Affairs and Trade wrote

recently, 'If you want to fix a problem, you have to understand what the problem is. If you don't, you could make it worse. 'While everyone agrees there is a housing affordability problem the fact is, there are actually two problems – a mortgage affordability problem for many home owners and a housing cost problem for many people wanting to buy their first home' (Australian Financial Review, 14.8.07, p.63). This is good advice and also why I think the housing needs of half the community may now be best conceptualized in regionally based, industry and community contexts and by related analysis of their constituent parts.

Just as American government policy makers have not helped Americans deal effectively with their growing health care problems, it seems that Australian governments have not helped solve the problems of Australian housing for millions of people, especially in recent years. Fortunately, new sustainable development requirements for control of greenhouse gases and for sustainable development will also require new, more competitive and sustainable approaches to regional policy and related environment development. This regional approach should also encourage housing and related planning to be better addressed by all representatives of those who currently live within any specific regional environments and those working in construction.

On the current evidence, any future funding or in-kind contributions made available by government and other contributors or investors for land purchase, housing and infrastructure development, housing purchase, rent and all ongoing management must be spent sensibly to achieve community goals of affordable, sustainable housing. Otherwise they seem likely to increase the housing divide between the wealthier 60% of the population and the poorer 40%. Poor housing policy decisions also add to greenhouse gas emissions and other problems related to air, land, and water degradation, including loss of biodiversity. This must be turned around. Understanding it helps one to do it.

Dr Nicole Gurran of AHURI pointed out yesterday that housing developers say that government bears much of the responsibility for increasing housing prices as a result of its land supply decisions; excessive fees and charges and excessive controls. As a 'mum' and housing consumer, seller, buyer, borrower and lender, I share their sentiments entirely. God knows how I should feel with my investor's hat on. As a recent retiree I unfortunately only know what infuriates and frightens me most about investment. However, this has also given me information on how one might cut risk and its costs. In general, I see lack of market transparency and related market risk as linked to unnecessary cost burdens and the supporting refusal of government and industry to talk openly, clearly and honestly to communities about their housing development and management concerns. This keeps us all comparatively stupid. An openly and competitively managed government, industry and locally pooled funding and investment approach to housing development seems necessary to address this major problem.

In retirement, I will not have to leave my house or the inner city that I love and have lived in since the early 1970s, because I am forced to move out by rising prices in the area. The latter seems to have been the fate of many who would have rather stayed in towns everywhere, as the comparatively rich move into the locations they find most desirable.

This unwanted family and community dislocation is also a key problem that social mix and key worker strategies should be designed to prevent, as Judith Stubbs pointed out.

A former employee of Lend Lease first told me that apparently unsustainable, free-standing three bedroom houses, far from railways stations and other public transport are usually much cheaper for a developer to build, through subcontractors, and for purchasers to buy, than other kinds of housing. Until I heard this I had naively assumed that economies of housing scale were more easily achieved by building more densely and upwards, rather than in multiple freestanding dwellings on the margins. It seems to me that developers and communities need to focus on more dense, attractive and sustainable construction near centres – at lower cost. Can such building be made cheaper and more sustainable? Only if costs are reduced for all those who can build more sustainably?
.
The proposals of the recent National Affordable Housing Summit present a related opportunity to ensure that consideration is given during regional planning and construction to reduction at the source of household emissions related to transport (31%); refrigerators/other appliances (25%); space heating, water heating, standby power, lighting and waste, which make up the household emissions burden, according to the WWF(2006). The Summit noted that housing is becoming increasingly unaffordable and decided that the Commonwealth should allocate at least $200 million per annum towards to the development of a national Capital Grants program and Affordable Rental Incentive Scheme, rising to a total of at least $500 million per annum in the fifth year. Commonwealth funding is available for a Residential Infrastructure Fund to support the building program with $250 million available in the first year, to grow to $500 per annum by the fifth year (www.housingsummit.org.au).

In addition, the Climate Change Group in the Department of Prime Minister and Cabinet (PM&C) have indicated that the government will provide an up front free allocation of permits (early action credits) to firms suffering a significantly larger than average loss of asset value as a result of the introduction of an aggregate constraint on Australia's emissions. It is proposed that such credits are only provided for activities that represent abatement that has actually occurred, and which are additional, permanent, measurable, and verifiable. Action credits may be accompanied by the government provision of offset credits if abatement activities occur in sectors not covered by the scheme (e.g. agriculture and forestry emissions). All suitable projects established after 3rd June 07 are eligible to apply for early action and/or offset credits. Why not get snouts into all the above troughs in an open, orderly and competitive manner to achieve more sustainable housing in the national and international interest, starting with those on lower incomes? I recommend something least ambitious first, which is a broad and open front of applications to the above Climate Change Adaptation Skills Small Grants Program funded by the AGO.

This discussion of risk management education and research also takes place in the context of continuing discussion of the National Greenhouse and Energy Reporting Bill (2007), prior to the introduction of an emissions trading scheme four years later. David Hutton, the CEO of Lend Lease Retail and Communities APAC, wrote to the Treasurer (28.9.07) that his organization believes that affordable housing and sustainable

communities can be best delivered in large scale projects and that this will result in the most integrated outcomes and most efficient use of any government subsidy. Lend Lease calls for clear identification of broadly expected project outcomes and a related clearer identification of major project risks and accountabilities. Why don't councils and communities identify regional community needs and meet them openly, in an openly organized way, including the developers? Regulations stop us doing what is sensible?

Cheers
Carol O'Donnell, Glebe, Sydney

TOWARDS GOVERNMENT UNITY OF PURPOSE ON SUPERANNUATION

OVERVIEW

Thank you for sending me the Parliamentary Joint Committee on Corporations and Financial Services report entitled 'The structure and operation of the superannuation industry'. I found it very clear and informative, with recommendations which also appeared very sensible in the light of the supporting discussion. However, I seek to make the single recommendation below and provide related discussion in regard particularly to the report recommendation 6. I do so to address one of the few areas where Labor members apparently dissented from the views of other committee members, in the hope that further discussion may bring even greater unity of purpose on this topic to all parties.

In Recommendation 2 the committee suggests that Treasury should conduct a review of laws and regulations governing superannuation to identify how they may be rationalised and simplified. Labor members support this recommendation and most others in the report. However, recommendation 6 suggests that trustees of superannuation funds should publicly tender key service provision agreements. Labor members think superannuation has been 'governed by the trustee system in a sound and effective manner' and are against the recommendation because it appears to imply broader and 'impractical and unnecessary interference in the internal operations of business' (p. 199). The recommendation below seeks to resolve this vital disagreement which is also linked to other concerns addressed by the Labor dissenters, albeit briefly.

RECOMMENDATION

Key assumptions, definitions and industry descriptions and relationships need to be logically addressed before effective discussion of the simplification of superannuation law, as recommended in Rec. 2, is possible. I recommend addressing these assumptions and related issues first and instead of Rec. 6. Key underlying assumptions regarding the necessity for structural separation of the superannuation fund and its trustee to gain good management practice are unclear. The report describes superannuation funds but also needs to describe their trustees, including their principle aims and relationships, before anybody can make sensible policy. I suspect that the normally expected separation of a superannuation fund and its trustee is an undesirable regulatory anachronism which increases scheme

cost and reduces transparency. I therefore recommend that future inquiry should address the aim and related rationale of any requirements that a superannuation fund should be managed by a trustee, 'at arm's length'. When is a separate trustee necessary and why? What exactly should the role entail? The report constantly refers to 'the industry'. This and other key terms and relationships need clearer definition and description before Rec. 2 can be adequately addressed.

SUPPORTING ARGUMENT

The report states that Australia has had a system of mandatory superannuation contributions since 1987, when the level of superannuation contributions an employer was required to provide on behalf of employees was first prescribed under some federal and state industrial awards. However, voluntary superannuation arrangements also existed earlier. Universal superannuation requirements were introduced in 1992 as a result of Commonwealth legislation which requires 'a superannuation guarantee'. All employers are accordingly required to provide continuing payments towards provision in old age for all their employees. Governments and workers also contribute to these superannuation pools. The report notes that in 1982/3, 82% of superannuation fund members were in a defined benefit fund but by 1990/91 the figure had dropped to 14% (p.18). I understand that a defined benefit fund indicates ahead of retirement the guaranteed level of benefit that an employee will get upon retirement. On the other hand, contemporary fund benefits usually depend on the investment performance of the superannuation fund to which the employee and other member contributions have been paid. A trustee is a separate entity from the superannuation fund and is normally required to manage the fund investment.

The report notes a historical 'shift from passive superannuation investments in which employers bore investment risk, to today's competitive market in superannuation investment products where investment risk has been transferred to employees, which has left consumers more vulnerable to the vagaries of the marketplace than they previously were' (p.119). Whilst employers may have borne the major investment risk in earlier defined benefit schemes, it seems to me they might also more easily avail themselves of the opportunity to support their own apparent interests at the expense of meeting future commitments to their staff. Perhaps the original requirements to have superannuation funds and trustee management responsibility for funds in separate business entities was established to deal with this earlier type of risk, which applied to defined benefit schemes covering comparatively few people and over which individual employers might otherwise have had control. There seems less potential for this problem since Commonwealth superannuation legislation has covered the whole workforce. Many superannuation funds are now more clearly separated from their contributing businesses. So why is a trustee still required to be a separate entity from a superannuation fund? Risks may now occur because superannuation trustees have far more broadly vested, opaque and conflicting interests than superannuation. Information on trustees as well as funds is necessary.

I cannot understand why separation between the superannuation fund and its management trustee seems automatically supported by all committee members, especially since the report states that there is 'a strongly held industry view' that further regulatory clarity is

needed on the role of the trustee. The report also states the dividing line between the 'trustee's and members responsibility may be legally unclear and that the recent Australian Prudential Regulatory Authority (APRA) interpretation of investment choice may prevent trustees offering 'real investment choice' to those wanting it (p.xv). Why must the superannuation fund and its trustee be separate entities? What are the parameters, key functions and key relationships of 'the industry' which is constantly referred to in the report? Who are trustees and are their total interests so broad as to lead to undesirable conflicts of interest and related costs? What is 'real' investment choice?

The requirement for the separation of a fund and its trustee is never justified in the report. It just states that superannuation entities generally operate under a trust structure (which is supposedly for the benefit of members and beneficiaries). According to the Treasury submission, under general trust law, the trustee must take ultimate responsibility for the superannuation entity for which it is trustee. The Chairman of the Corporate Superannuation Association says this legislated structure, which separates the superannuation fund from the trustee, means the trustee will then act for the benefit of the beneficiaries and not for their own profit. I fail to see why this is necessarily so. Please explain. The International Organization of Pension Supervisors (IOPS) Principles of Private Pension Supervision do not appear necessarily to require a separation between a superannuation fund and a managing trustee, although they state, among other things:

- Pension supervisory authorities should have operational independence
- Pension supervision should seek to mitigate the greatest potential risks to the pension system (p. 21)

Australians and the IOPS currently appear to be operating with different theoretical assumptions. These should be investigated properly. Superficially, the IOPS requirements seem sensible but the Australian requirements do not.

The report states there is agreement in 'the industry' that 'the trustee's role is primarily twofold: to facilitate the selection of investments by a member through provision of a 'menu' of investment options and 'to make a default selection' in circumstances where the member has either not provided investment instructions or is unable to do so. It also states that 'notwithstanding the advent of member investment choice, default investment options remain a critical component of the compulsory superannuation system. This is one of the main reasons why the role of trustee is critical to the long-term viability of the superannuation system' (p. 56). I cannot see how this or anything else in the report justifies the automatic separation of a fund and a trustee.

The report states that approximately 82% of Australians default on their investment and/or insurance structures' (p.104). The term 'default' seems confusing and inappropriate in regard to superannuation choice, if the members have purposely allowed those more informed than an isolated individual can normally be, to manage their investment. This is my personal situation in regard to my Unisuper investment and I see mine as a comparatively well informed and rational choice in what is an opaque and possibly dangerous financial world for most individuals. To call this a default is

misleading. (For a comparative example, putting oneself under hospital care is not considered a 'default' position, in seeking to address a health related problem, although neither is one ever forced to visit a general practitioner or take her normal remedies.)

The Mercer Human Resources submission apparently stated that 'The number of funds is still diminishing. We are suggesting that within five to ten years, the top ten funds will represent perhaps 40% of the industry'(p. 30). But how many superannuation trustees are there and what are their other functions besides managing superannuation?
The Investment and Financial Services Association (IFSA) submission apparently suggested trustees should have three distinct functions: formulating and documenting investment strategies; managing investments selected by members in a prudent manner, and reporting to members on those investments' (p. 65). Do trustees commonly have other functions unrelated to superannuation fund management? What are they? How do superannuation functions relate to other functions a trustee may have and how might these influence members' selection 'in a prudent manner'? The word 'default' does not sound prudent but it may be. Why keep using it? Does the usage perhaps reflect that trustees have conflicts of interest? Do some see a growing financial benefit in selling comparatively ignorant individuals high risk, opaque, financial products, but then also have responsibility for managing total superannuation investments effectively as well as confidentially? Does recent increase in mortgage failures suggest this may be so?

The MLC submission argued that consideration should be given to removing 'the custodial option for trustees' because the custodian 'does not provide security or consumer protection for losses resulting from operational risk, trustee malfeasance or incompetence' (p.75). What is 'the custodial option'? Is it the role of risk underwriter which is normally performed by insurance companies in the private sector, unless they collapse, like HIH? Why should the role of the fund and trustee be separate if this seems unlikely to prevent charges of trustee malfeasance or incompetence, according to the MLC? The proliferation of separate entities often appears to provide more opportunities to avoid transparency and increase general confusion and cost to consumers. For example, when Westpoint collapsed in late 2006, owing 4000 investors $300 million, the liquidators had to wade through millions of documents related to almost 200 companies that formed the group (Australian Financial Review, 14.8.07, p.7). Separation and proliferation of business entities appear to lead to opaque, costly, uncertain outcomes. Yet they often appear automatically supported in the report. I think this is likely to be because the perspectives are mainly those of financial service providers rather than service consumers. Outdated legislative assumptions may also remain unquestioned.

Steve Blizard, from Roxburgh Securities, noted that the industry super funds generally contract out the services of numerous Investment Managers, Managers, Auditors, Lawyers, Asset Consultants and Administration Service Companies (p. 36). The Financial Planners Association (FPA) expresses concern at the lack 'of transparency' in arrangements between 'trustees and service providers'. However, such submissions also appear to think that 'arms length' contractual arrangements enhance informed decision making(p. 37). How can this be so if their comparative cost performances and investment outcomes for consumers are opaque? The committee states that 'it is

imperative that related party transactions for the provision of services are conducted at arm's length' (p.41). Again, why? Undesirable arms length management may just add to cost, opacity and lack of effective management control to meet the interests of key stakeholders. Are my assumptions not considered because they are a consumer's view?

The report provides no idea of how many separate superannuation fund trustees there are and what else they do, if anything, besides managing superannuation fund investment. How do these trustees relate in practice and ideally to banks and bank trustees, insurance companies and other types of funds and their trustees? For example, the report states that the 'sole purpose' test ensures that the retirement income objective remains paramount (p.26), but this is misleading because disability and death benefits are also options attached to some superannuation schemes. As a former university employee I have money invested in UniSuper, whose product information states that 'Unisuper and Trustee' mean UniSuper Ltd is the product issuer'. I assume UniSuper Ltd. is the trustee. Until recently I was also a member of Members Equity Bank, which calls itself 'The Super Funds Bank'. In housing loans that I took out, the lender (trustee?) appears on Members Equity letterhead as Perpetual Ltd. My personal experience suggests that establishing multiple trustee relationships may unnecessarily and objectionably increase cost to consumers of loan products, reduce transparency and hinder the potential for employees or bank customers to access the kind of financial products they may need most, such as cheap, low risk, housing loans. This requires investigation. (See also Urban, P. 'A super cure for mortgage defaults', Aust. Financial Review, 14.8.07, p.63).

Labor committee members reject Recommendation 13, stating that 'compulsory unit pricing for all public offer superannuation funds is not necessary. This is a commercial decision to be made by the business, not imposed by government'(p.199). This seems a wrong view because the economic valuation of services is vital for any broader comparison of their social or environmental value, and for all related improvements which may be gained by competition. In health care provision, for example, the unit price for specific services, which is decided by Medicare and the diagnostically related group pricing system, puts downward pressure on the prices charged by health insurance companies, doctors and hospitals, in the interests of service consumers and insurance purchasers (although private patients may face gap payments).

In regard to recommendations 28-31 on self managed superannuation funds (SMSF), Labor members state that whatever the level of detail of regulation in the SMSF sector, it should be a level playing field applying equally to all. (In SMSF funds all members are apparently also the trustees of that fund (p. 184)). How is it possible to theorize a level playing field or gain the benefits related to effective competition upon it if one has no reasonable measure of service pricing?

In my view, however, the justification for separating funds and the trustees' responsible for managing them needs to be addressed first, which leads to this submission. Thank you for the very clear and informative report and for the opportunity to comment. I attach supporting articles on general policy direction. One includes discussion of the Senate Committee report on transparency and accountability of Commonwealth public

funding and expenditure (2007). The other addresses the recent ALP paper on Federal-State Reform and Specific Purpose Payments (SPPs) (31.7.07).

Yours truly
Carol O'Donnell, Glebe, Sydney, NSW 2037.

[Received by email on 29 February 2008]

Dear Sir/Madam

Review of Regulatory Burdens – Manufacturing and Distributive Trades AND Select Committee on State Government Financial Management

In the interests of effectively joined up government, which is vital for the reduction of the Australian regulatory burden, I provide the following comments to the Productivity Commission (PC) Review of Regulatory Burdens in the Manufacturing and Distributive Trades and also to the Senate Select Committee on State Government Financial Management. I address the following terms of reference respectively:

'Present reforms that will enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation or in the roles of regulatory bodies (PC)

'Present and future ownership structures of current and former state owned utilities and the impact of ownership on investment capacity' (Senate).

I address these terms of reference through discussion of policy direction in relation to sustainable development, which may be led by large polluters in energy and manufacturing. This discussion therefore directly concerns those in current discussions on implementation of the Inquiry into Electricity Supply in NSW (Owen 2007) and has related implications for all manufacturers and distributors reliant upon the privatization outcome. The recommended direction is addressed in the attached responses to:

- Garnaut Climate Change Review Paper 4 entitled, 'Research and Development: Low Emissions Energy Technologies'.
- Garnaut Climate Change Review Paper 2 entitled Financial Services for Managing Risk: Climate Change and Carbon Trading

The suggested direction seeks to meet Garnaut's Terms of Reference by addressing:

The economic and strategic opportunities for Australia from playing a leading role in our region's shift to a more carbon-efficient economy, including the potential for Australian to become a regional hub for the technologies and industries associated with global movement to low carbon emissions; and

The costs and benefits of Australia taking significant action to mitigate climate change ahead of competitor nations

In its submission to the Australian House of Representatives Standing Committee on Economics, Finance and Public Administration inquiry, which produced a report entitled 'Australian Manufacturing: Today and Tomorrow' (July 07), Bluescope Steel stated one of its major priorities is 'ensuring greenhouse gas regulations do not make Australia's steel industry uncompetitive'(p.2). Bluescope also pointed out that China is the world's largest producer and consumer of steel and is naturally a major polluter. The ACTU submission repeatedly stressed the importance of Australian industry

progressing 'up the value chain'. In this context, the National Greenhouse and Energy Reporting Bill may be regarded as an opportunity to replace a great deal of dysfunctional regulation in a way which creates freer, more stable, more informed markets and better skills development.

Although 'Australian Manufacturing: Today and Tomorrow' (July 07), referred to its abhorrence for government financial support strategies which attempt to 'pick winners', such strategies are commonly supported by government and used in practice. Examples include the report's discussion of Export Marketing Development Grants (EMDGs), research and development tax concessions, and the case of venture capitalists. It appears that many of those in manufacturing, no doubt like many academics, feel that hopelessly competing for comparatively small amounts of money is a waste of organizational and related government time and money. For example, the Australian Steel Institute noted:

> 'I have heard quotes that it costs you $100,000 to get $95,000. There is a balance between due diligence with government funds and getting it to the right people. (p.164)

The attached submissions discuss ways of cutting all such related and dysfunctional bureaucratic costs, through more scientifically rational, regionally coordinated, industry and community identification and prioritization of problems which may be solved by innovation aimed at more sustainable development. This is the same process by which many other unnecessary regulatory costs may also be substantially reduced.

For example, the Senate inquiry into the National Greenhouse and Reporting Bill (2007) noted that there are fifteen commonwealth, state and territory programs with greenhouse and energy reporting requirements. This is an opportunity for an investigative baseline audit of major polluters to establish a unitary scientific foundation for carbon pricing and permit trading and for better industry and community based innovation and development systems in the future. Without this, trading to improve sustainable development performance will be highly speculative, with all the associated high risks and costs.

The Department of Climate Change Regulations Policy Paper entitled 'National Greenhouse and Energy Reporting System' (Feb. 2008) should first be adopted as an industry code of practice and an audit of the greenhouse gas emissions of large polluters should be undertaken to consider the adequacy of the current directions of the National Greenhouse and Energy Reporting System Discussion Paper entitled 'Technical Guidelines for the Estimation of Greenhouse Emissions and Energy at Facility Level (Energy, Industrial Process and Waste Sectors in Australia) (Dec. 2007).

A more informed, freer, and more competitive market can then be ushered in by big polluters with government, industry and community help. Ideally, the government will provide the big polluters with an appropriate number of carbon permits, which have a scientifically identified monetary value. The permit issue is ideally designed and managed to control inflation and to attain more open, scientific, stable, and competitive market operation, through industry activities related to control of

greenhouse gases. Polluters can choose either to reduce their greenhouse gas emissions at the business source, or invest in the control of emissions identified in surrounding communities.

The recommended regional, industry and community direction can also help the NSW Premier and others to rid themselves of a variety of feudal relations which place unnecessary costs upon consumers, in order to maintain their historically controlling but dysfunctional privileges. More open and scientific approaches to carbon permit design would enable many legal, bureaucratic and academic cost reductions to occur in future. A competitive, social insurance model of investment would also increase market stability.

My article entitled 'From the Constitutional Past to the New Educational Ideal' which is also attached, was recently published in 'Public Administration Today', the journal of the Institute of Public Affairs of Australia (Oct.-Dec.2007). It discusses related but broader Australian national and international directions and the dysfunctional legislation which inhibits this direction. Sustainable development requirements are opportunities to break with this narrowly irrational feudal past to gain more scientific and competitive approaches to achieving development in all industries and communities. Please lead this.

Thank you for the opportunity to make this submission to your inquiries. I can be contacted on 02-9660 8716.

Yours truly
Carol O'Donnell

[Received by email on 5 March 2008]

I would also like to draw your attention to page 46 of the Garnaut Climate Change Interim Report which, under the heading 'Robust Institutional Arrangements are Needed', states that:

'Variations in the number of (carbon) permits on issue or the price would have huge implications for the distribution of income, and so be expected to be the subject of pressure on Government. There is a strong clase for establishing an independent authority to issue and to monitor the use of permits, with power to investigate and respond to non-compliance.'

Apparently unlike Garnaut, I assume it is the job of government to govern, using and protecting public money. Sending public money off to be managed at arm's length by someone else merely ensures that government is ignorant and unaccountable about the funds it has been entrusted to manage in the public interest. I have pointed out a related problem previously in regard to superannuation trustees (see attached). I would be grateful if you would also consider this problem in your discussion of regulatory burdens.

(The apparent idiocy of the legal and related economic paradigm blows my mind. How do they all keep a straight face?)