
PANEL SESSION 3

Invited paper 9

Deregulation, competition policy and environmental performance: a case of throwing the baby out with the bathwater?

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9.1 Introduction

Westernport Bay is one of any number of practical examples of how an evidently benign action — the use of groundwater for irrigated horticulture — can have unexpected environmental and economic consequences. In this case, groundwater extraction in the 1970s and 1980s depleted the aquifer to the extent that positive pressure from seawater created a saline intrusion problem, requiring a moratorium on water use for a period. That same period — particularly the mid-1980s — saw a major decline in the seagrass beds of Westernport; coastal mudflats listed under the Ramsar Convention for wetlands of international significance. Not only has this affected fish stocks in Westernport, but it also means that the penguins at Phillip Island (a major tourist drawcard) now have to swim a lot further to get a feed.

In this case, early intervention by the Victorian Government to require aquifer modelling, environmental impact assessment and regulation of groundwater extraction could have saved a lot of time, money, seagrass, fish and penguins.

In this paper I want to argue three main points.

1. Environmental and resource degradation invariably involves significant economic externalities and market distortions — *it's just that we are not very honest or systematic about investigating them.*
2. Given these externalities, efficient and accountable regulatory and policy intervention by Government is warranted — *a case for review is also presented.*
3. Environmental objectives are *not inconsistent* with competition reforms and the principles of competitive neutrality.

9.2 Economic dimensions of environmental degradation

The following are two broad categories of environmental degradation where I have attempted to summarise their major economic downsides.

Similar examples can be found everywhere.

River regulation and water extraction

<i>Environmental Impacts:</i>	<i>Economic Impacts:</i>
<ul style="list-style-type: none"> • seasonal variability is reversed, disrupting natural ecological cycles • floodplains, wetlands and billabongs dry out • river estuaries suffer from reduced river flows and changed water chemistry • deep, cold water releases kill aquatic fauna • in-stream structures block fish migration • in-stream flows increase relative to over-bank flows, causing erosion, bank instability and loss of habitat • regulated sections of rivers become havens for introduced fish species • groundwater-dependent ecosystems (some mangroves, wetlands and seagrass beds) decline or disappear 	<ul style="list-style-type: none"> • the value of commercial and recreational fisheries declines. Note that coastal fisheries yields are closely related to river flows • recovery plans required for those species hardest hit by changes (fish, waterbirds, etc) • remedial works required (fish ladders; erosion works, revegetation, etc.) • some wetland and floodplain-dependent industries decline (redgum logging; birdwatching; tourism) • infrastructure costs (dams, debt; etc.) mainly borne by the taxpayer • lost fishing productivity from loss of mangroves and seagrass beds (1 hectare of mangroves worth \$8 000 per annum) • Taxpayer-funded research and development expenditure on riverine and coastal degradation

Vegetation Clearance

<i>Environmental Impacts:</i>	<i>Economic Impacts:</i>
<ul style="list-style-type: none"> • extensive habitat destruction across vast areas • fragmentation of remaining habitat • increased soil and watercourse erosion, soil structural decline, and loss of soil micro-organisms • increased groundwater recharge, rising water table and (often) salinity • increased rate of surface run-off, heightened flood peaks, increased river sediment and pollutant loads, and siltation 	<ul style="list-style-type: none"> • management plans required for species and ecosystems most affected • reduced farm productivity (soil degradation, salinity and soil erosion) and loss of productive land • river and coastal pollution, reduced fish productivity, river/estuary dredging costs, tourism impacts (for example Great Barrier Reef) • increasing rural industry reliance on taxpayer-funded productivity (and other) programs (for example, Landcare, diesel rebate, drought relief) • research and development expenditure on soils, water and farm productivity

9.3 Reforming oversight and intervention by governments

For many environmentalists, bitter experience has led many to interpret the word *deregulation* as getting rid of regulation irrespective of whether it is good, bad or indifferent. From a business perspective, a quick and dirty pruning exercise over any form of regulation may always seem an attractive proposition, particularly if it helps the bottom line.

A business environment free of environmental regulation may increase profits, but environmental externalities, and the economic dimensions which are invariably associated with them, means that simply doing away with environmental regulation comes at someone else's expense, either now or into the future. Market imperfections are a fact of life, and we have to deal with them.

So the issue is not so much deregulation, but regulatory and procedural reform — how to achieve appropriate forms of regulation, oversight and intervention which achieve the desired outcome(s) effectively, consistently, and at least cost.

The need for integration in environmental legislation and regulation

A very important issue in the current complexity of environmental, natural resource management and planning legislation and regulation is that there is simply too much of it.

In a 1994 review of the *New Zealand Resource Management Act*, we compared the number of Acts in Australia with those in New Zealand, and the results were startling to say the least.

<i>Type of Legislation</i>	<i>Aust</i>	<i>NZ</i>	<i>Type of Legislation</i>	<i>Aust</i>	<i>NZ</i>
Air pollution	58	5	Environmental planning	144	19
Noise pollution	48	4	Fresh water pollution	138	4
Solid waste disposal	78	2	Marine pollution	86	4
Toxic/hazardous substances	120	16	Nature conservation	290	27
Resource allocation	168	8	Development	185	37

While some of this discrepancy is due to Australia's federal system of government, this is no excuse. Basically, our resource management, planning and environmental law has evolved in a piecemeal, ad hoc and reactive fashion.

These overlapping, inefficient and sometimes conflicting and archaic laws result in confusion, delays, inertia and poor environmental outcomes.

In the late 1980s, New Zealand embarked on a review of its environmental and related legislation which was both brave and ambitious. They identified a number of problems with existing legislation including:

- high costs of working with existing laws to both industry and government;
- unreasonable delays in gaining development consent;
- existing laws often had conflicting or inconsistent objectives; and
- new and emerging issues (for example, climate change, organisms in ballast water) were inadequately covered in existing legislation.

The end result can be summarised as follows:

- replacement of dozens of separate Acts with one *Resource Management Act* 1990, covering land-use planning, water resources, coastal management, environmental protection and other issues;
- restructuring of local government to align with catchment boundaries;
- establishment of a national policy framework, a policy hierarchy and a process for developing and reviewing national and regional policy;
- delegation of the responsibility for developing resource management plans to regional government; and
- a single development consent process for any development proposal covered under the Act.

Despite lots of interest in adapting this approach to Australia's federal system, no Australian government has made any moves towards a New Zealand-style review of its legislation. Cross-portfolio reviews of any kind are taboo, it seems, and no one in Government seems willing to move into this volatile territory. But we believe that the time for reform is well overdue.

Confusing *Method* with *Aims and Objectives* — a common problem

One of the most common malaises in environmental regulation is the tendency to confuse the *method* to be used in managing a particular environmental impact with the actual *aims and objectives* that you want to achieve. This is a subtle but critical distinction if any reviews of environmental legislation and regulation are to be effective.

From an environmental perspective, the legislation and regulations for the Sydney Water Corporation is the most progressive for any water agency in the country. But it is not without its faults. One of these is the legislated

requirement that Sydney Water work towards an ultimate end to all dry-weather discharges of sewage effluent into receiving coastal and river waters, thereby requiring 100 per cent water recycling.

On the positive side, this requirement has been one of the driving factors behind a comprehensive review of wastewater management and related issues.

But the legislated objective is actually only one of several methods of dealing with the problems of wastewater quality on the one hand, and growth in demand for potable water on the other. What is more, it is almost certainly not the best or most cost effective method of doing so — achieving 100 per cent water recycling from sewage effluent would be massively expensive, and would probably have a variety of undesirable impacts on the environment.

However, if Sydney Water's objectives in this instance were re-described in terms of:

- sewage effluent disposal standards appropriate for the receiving waters in question; and
- aims and parameters for water conservation, water consumption and wastewater recycling

then good environmental objectives can be realised much more efficiently. A consultative process looking at these issues is currently underway.

Sewage treatment standards across the country are rising, and rightly so, particularly where effluent is discharged into rivers or confined coastal waters.

In this context, imagine a planning authority approving town of 50 000 people where human waste was simply discharged into a large and primitive septic tank. This is precisely the regulatory environment you face in most parts of Australia if you want to build a piggery for around 10 000 pigs or so (equivalent to about 50 000 people).

If the objective is to protect human health and water quality, there is no reason why such lax regulatory standards should apply for one industry while similarly lax standards could never be contemplated in another. But the objective in the case of the piggery effluent regulations seems to be more of a method — a way of attracting investment in piggeries.

Resource access (or 'property') rights is another area where method is often confused with objectives. I refer particularly here to the issue of permanent (or near-permanent) property rights to access a resource.

Entitlements in forestry, fishing and water resources are useful examples, where the method of allocating scarce resources — invariably *permanent* and

tradeable entitlements — has been confused with the objective of sustainable management of the resource in question.

The typical approach to the issue of property rights is as follows:

1. Make an assumption that resource stocks are known.
2. Make an assumption that environmental impacts are not an issue.
3. Make an assumption that you will never have to re-visit the extent of allocation, *ever*.
4. Issue generous, permanent entitlements, either free, or at a rock bottom price.

Based on past experience, over-allocation is almost synonymous with natural resource management in Australia. In native forests, problems include inadequate data on timber resources and growth rates; fire, insect and pathogen damage; and the subsequent identification of high conservation values. With water resources, climatic variation; poor data; and lack of consideration for environmental and downstream uses are the major issues. Fisheries face similar problems, with the added complication that the relationships between populations of different species and communities (for example, shark, octopus and crayfish interrelations) is never considered.

Permanent entitlements to any natural resource are a bad idea, and there are several reasons for this:

- natural systems are naturally variable, and knowledge of our impacts on them is, at best, uncertain;
- over-allocations require expensive buy-backs (for example, abalone licences in Bass Strait) and/or politically volatile fixes (for example, over-allocation of water in inland NSW);
- the flexibility demanded in adaptive natural resource management demands a *limited tenure* approach to resource entitlements; and
- tenures of 5–15 years are perfectly adequate for most investment pay-off scenarios.

Transparency and accountability

The words *transparency* and *accountability* are used a lot these days, but to little effect I fear. At the Australian Conservation Foundation we constantly encounter examples of ad hoc-ery in decision-making, most of which display some common characteristics:

- blatant political pork-barrelling;
- a shroud of secrecy over the reasons and motives behind the decision; and

- poor environmental outcomes.

Water resource management in Queensland provides numerous examples of the lack of transparency and accountability in Government. Queensland's Minister for Natural Resources is pretending to operate under a number of key policy commitments as follows:

- the Murray Darling 'cap' — an agreement to halt water consumption at 1994 levels in recognition of the rapidly deteriorating health of the Murray Darling river system; and
- the COAG Water Resources Policy, requiring:
 - full cost recovery;
 - an end to Government subsidies in water resources infrastructure; and
 - the allocation of water specifically for environmental purposes.

The reality in Queensland is rather different:

- increasing water extraction in the border rivers region of Queensland, in open defiance of the cap agreed to by all four Murray Darling states;
- announcement by the Minister of new water storages in several locations, pre-empting the outcome of legislated, consultative processes examining environmental and water resource issues in these rivers; and
- announcement by the Minister of a \$1 billion Water Infrastructure Fund aimed principally at subsidising irrigation infrastructure for cotton and sugar interests.

Planning law is another area famous for Ministerial intervention. Victoria's Planning Minister recently intervened to ensure that a proposed gambling and entertainment complex is constructed at an environmentally sensitive part of the Yarra River floodplain. If the development proceeds, it will dramatically increase the risk of flooding to properties over a large part of the Yarra valley — a risk the Government is under no obligation to cover. So why the intervention?

My point here is not that Ministerial intervention in certain processes is not warranted sometimes, just that it should be fully debated beforehand, and the reasons made explicit.

Greater transparency and accountability is required across a range areas. These include:

- reviews of existing legislation and regulation;
- planning, environmental and resource management regulation;
- regulation of utilities;
- regulation of prices charged by government agencies;

- trade practices and competition law; and
- the nature, allocation and tradeability of resource access ('property') rights.

Competitive neutrality in environmental and resource management

In the primary production sphere in particular, anti-competitive behaviour by governments and government agencies is rife. This is one area of competition policy which the Australian Conservation Foundation is very keen to see addressed.

In the debate over microeconomic reform over the last decade, agriculture and resources sectors — and more specifically, the arms of Government which service them — have not been subjected to the same level of scrutiny that other sectors of the Australian economy have. Government agencies in these areas are ripe for reform in a number of areas:

- the need for adequate accounting of recurrent and capital expenditure in servicing agriculture and resource industries;
- the need for full cost recovery to be built in to pricing structures;
- no provision for subsidies (particularly capital subsidies, for example dams; drought relief; diesel rebates) without adequate justification; and
- the need for a positive rate of return on assets.

In the water resources sector, some reforms are underway, but progress has been slow. In other sectors — forestry, for example — progress has been almost non-existent, but is urgently needed. For example, if a farmer wants to grow trees commercially, particularly hardwood, that farmer must cover all costs, cover interest foregone over the investment period (say, 20 years) and sell at a price which provides a commercial return. But how can this farmer compete against a state forestry agency selling timber from native forests at a hefty loss, in the absence of any capital accounting whatsoever, and without any requirement to make a profit?

Similar examples of uncompetitive behaviour can be found in government fisheries, minerals, energy, agriculture and water portfolios.

If anyone has seen the recent Audit of Commonwealth Natural Resource and Agriculture Programs, you will notice criticism of Landcare, where the performance of hundreds of millions of dollars in Government 'environmental' funds has never been monitored or measured to any useful extent. We are also concerned about the lack of demonstrable public benefit from these public funding programs. For example, who benefits from pasture improvement

subsidies granted to the wool and beef sectors? While these subsidies are aimed at salinity mitigation, considerable doubt exists as to whether they contribute anything useful in this regard. But pasture subsidies do add considerable value to grazing enterprises, which is perhaps the real reason for their existence.

9.4 Summary

To summarise, we see competition reforms as both an opportunity and a threat for the environment. For all the reasons discussed here and more, we see a great many positive environmental outcomes being possible under competition reforms. But we nevertheless hold a number of concerns about the direction of competition reforms, driven as they are by people who generally know very little about environmental issues, and probably care even less. It is all too easy for a treasury official or economists to complain about 'green tape' without really understanding the issues involved.

I come back to my three major points.

1. Environmental and resource degradation invariably involves significant economic externalities and market distortions.
2. Given these externalities, efficient and accountable regulatory and policy intervention by Government is warranted.
3. Environmental objectives are *not inconsistent* with competition reforms and the principles of competitive neutrality.

The challenge for environmentalists such as myself is to inform and educate economists and the business community that there are mutually beneficial ways through this debate, and hopefully to start working more cooperatively towards this end.