

QUALITY MANAGEMENT OF CONTRACT AND OTHER CONSTRUCTION MATTERS FOR BUSINESS HEALTH AND ENVIRONMENT DEVELOPMENT

Introduction and key policy message in construction

This submission responds to the following Productivity Commission (PC) reviews:

1. Performance benchmarking of business regulation – planning, zoning and development assessments
2. Education and training workforce

It discusses how to remove unnecessary protections for existing businesses from new and innovative competitors, as is required by the PC study on performance benchmarking. It also discusses the current and future supply of the education and training workforce in a related context of industry and business performance benchmarking to support quality management. The home building contract is discussed as a quality management tool. Combinations of on the job training, related work approvals for payments and supporting training via video modules may produce skilled workers and better work practices more easily than present methods. The Skills for Sustainable Growth strategy which will provide \$661 million to develop workforce skills was announced in the budget speech (11.5.2010). The suggested way forward may produce faster and better results than traditional training and education channels. Compare the pair. Construction workers have difficult lives with early starts and much job uncertainty and travel. They should not also have to travel large distances to classrooms. They need accreditation on the job.

In this context quality management and education may best be envisaged as human rights which depends on clearer and more openly informed scientific approaches to work and environment development, rather than on more narrowly channeled, secretive and costly approaches to the contract, education and all related matters. In 2008 the Deputy Prime Minister and Minister for Education, Employment and Workplace Relations, Julia Gillard, appointed the Hon. Murray Wilcox QC to consult and report on government commitment to establish a specialist division in the inspectorate of Fair Work Australia (FWA) for ‘the building and construction industry’. A related discussion of the Wilcox report is attached with recommendations for future directions. This discussion is also relevant in the case of the current review of implementation of the nation building and jobs plan in NSW.

The current submission argues that the construction industry should:

1. Use the home building contract more effectively and broadly as a model guide to quality management of the job
2. Take a related Open University approach to teaching and learning on the job, supported by open curriculum content for key skills development and related education, identified in key industry and regional settings and disseminated via videos, TV or related media. Set this up early through the Building the Education Revolution (BER) Implementation Task Force or an appropriate construction industry body which will act openly, consultatively and fast.

3. Collectively manage the key social, environmental, risk and related investment needs which have been identified in regional communities, together with government and other profit or non-profit investment sources, such as industry superannuation funds.

4. Lead the nation in quality management approaches to industry development in cooperation with others, such as the Council of Australian Governments (COAG).

Key principles of quality management and the problem of skills development

Quality management depends on production, research and education driving each other openly in an iterative process to gain better results for everybody. An illustrative submission on Australian research and development is attached which also deals with skills development and argues it is ideally conceptualised to achieve national and regional goals which are social, environmental and economic through public/private and other community partnerships. Elected government representatives should now help identify and try to achieve the prioritized social, environmental and economic goals of regional communities in a way which also preserves natural and other resources for future generations, not just current voters. These goals ideally reflect national aims and minimum standards and freedoms in United Nations (UN) instruments as well. Julia Gillard and Robert McClelland, the Attorney-General, want to address human rights education. See the related research, teaching and policy direction at www.Carolodonnell.com.au , plus project management style assessments.

A submission to the Australian Health Ministers Advisory Council on a national registration and accreditation scheme for health professions is attached which addresses quality management and related training issues in health in a manner consistent with this submission on construction. The COAG first called for national standards for health and environment protection, related occupations and supporting education in 1990. All Australian governments passed mutual recognition legislation to prepare for a nationally competitive approach to regulation in 1995. In 2007, a PC review of the primary sector indicated the COAG initiatives to facilitate mutual recognition of many skilled occupations under state legislation have made little progress. In 2008 COAG was still seeking a single national registration and accreditation scheme for health professionals, to be developed by 2010. How hard can it be to identify key curricula for any vital work and put it out on TV or video in a clear, cheap form, available to anybody? Not hard. Registered training organizations do not prepare for and assist accreditation well enough.

Unless COAG breaks the multiple and secret academic, teaching and related professional and bureaucratic strangleholds on education delivery, by inviting current or past teachers and suitably qualified others to contribute immediately to relevant curriculum which is openly accessible to all, COAG goals are unlikely to be achieved. As a former public servant I bet the recent loss of life, fires and instances of corruption which accompanied the home insulation scheme partly occurred because the industry successfully urged that fast job protection was the paramount concern and that training for safety should be left to slower, narrower and opaque industrial channels. A clear video on key issues, given away by any newspaper, might have upset teachers throughout Australia. The public might too

easily want to connect many more such skill demonstrations, inconveniently from current teaching perspectives. How many years will it take to produce the requisite green skills at normal teaching rates - forever? Most people working in Lake Cargelligo or environs should not have to go to Orange to learn green skills. This is too difficult and costly.

The best way to identify the skills needs of any Australian industry sector and to create the situation that allows for the best match between skills and job opportunities is to create more opportunities for key on-the-job learning and for related curriculum and accreditation which is provided as openly, flexibly and cheaply as possible to ensure its relevance and quality for associated business and community actions which also lead to greener futures. This work and education process may now be best led in major resource and infrastructure projects in consultation with government and relevant interested communities. It is also discussed later in regard to home building, where the contract clearly lends itself to the establishment of sensible systems for work guidance, approval of task completion, payment and value towards accreditation. There is great scope for better practice through better communication and record keeping in construction. The building contract could be used effectively for many related purposes, as discussed later.

Ideally, elected representatives should now help identify and achieve the key social, environmental and economic goals of regional communities in a way which is also sensitive to the needs of future generations, not merely current voters. These goals ideally reflect national aims and related minimum standards and freedoms outlined in key UN instruments. The draft report 'On Sound Commercial Terms', by the Victorian Competition and Efficiency Commission inquiry into regulatory impediments in the financial services sector (2010) suggests new public private partnership investment models to support the National Public Private Partnerships Policy accepted by the COAG. One hopes that many partnership models will be openly and consultatively applied and that COAG lawyers, economists and many other policy advisers on which those elected must usually depend are up to it. The evidence is far from encouraging, as discussed in regard to contracts later below and attached. COAG needs better support.

Quality management in construction is ideally reflected in good contract writing

Quality management on building sites and in hospitals with patients or in the community with clients often involves similar management concerns. Administrative systems need to be focused on the site and patient or client focused for best project results and for related project comparisons. This may also form a key basis for research. The individual project manager ideally ensures an administrative system which enables all the people who will contribute to the total work or treatment process to understand their place in it. The more that workers and clients understand about the relationship of their contribution to the ideal result of all the work necessary for the joint undertaking the more they will also understand their role and contribute better while learning further. Open operation reduces anxiety levels for everyone. Secretive operation, on the other hand, increases worry about what will happen next and causes mistakes, delays and costs because of ignorance.

Consumer driven management and quality management are integrally related but difficult to achieve wherever business management is narrowly focused on maintaining contractor secrecy to achieve short-term commercial goals, as distinct from openness to achieve the broadly identified project goals which are often social and environmental as well as economic. To understand what any people want or need, in order to meet it effectively, all involved in any process are ideally able to understand and express what it seems to be. Plain and honest English information and recording is thus central to the quality management process and to an effective contract and its effective carriage. In this context, the draft document 'Australian Consumer Law: A guide to unfair contract terms', developed jointly by the Australian Competition and Consumer Commission, the Australian Securities and Investments Commission, and the State and Territory Consumer protection agencies shows the writers have no idea what they should be doing for consumers, as distinct from lawyers, and also have no capacity to communicate it. I have revised their largely incomprehensible effort to the two page pamphlet below which is entitled: 'What to do if you think you have an unfair contract'. I hope you agree.

The 'Consumer Building Guide – Essential information for anyone building or renovating their home' produced by the NSW Office of Fair Trading seems excellent. The guide describes an apparently logical step by step process without mentioning, except when necessary and in passing, the maze of outdated, incomprehensible, inconsistent laws through which one is often forced to drive so expensively, on the way to getting something done. Unless this model consumer building guide approach to law is taken, all business which is not already rich appears more likely to grind towards failure and halt, which seems to be particularly unfair on small businesses. Laws should assist broader and more openly scientific management approaches. There are too many narrow, contradictory and outdated laws for each to drive by itself. This approach is too impractical and costly to be borne. It is also pre-scientific in its obsession with blindly following or ignoring secret orders as distinct from applying evidence and common sense.

The NSW Office of Fair Trading Home Building Contract also seems a clear, informative and helpful product. It must be filled in properly for quality management. Ideally, the people who originally called for the contract must see that it clearly reflects what they wanted most. If additional minutes or other documents have to be signed again and added to the contract to achieve it, this is an extra messy and confusing waste of time. Clause 11 of the contract is the **prime cost items schedule**. When filled in it should clearly display the required inputs and amounts related to the step by step achievement of the key conditions which originally led to the contract agreement and its expected production outcomes. Clause 12 provides the **progress payments schedule** which is also related to the staged and approved completion of the work. This may also relate to the later **schedule for inspections**. This may ideally ensure work quality, the resulting periodic payment and any related accreditation of skills development on the job.

The contract must be filled in clearly in regard to all the above and to reflect the original minutes of meeting which clinched the deal. If this does not occur, quality management has broken down and the contract rules in court. The **prime cost items schedule** is an ideal reference for the nominated project manager to use for project management purposes

and also to post on site, so that everybody who lives or arrives there has a reasonable idea of what is expected to go on and when, as well as how to contact the project manager. The **prime cost items schedule** may also be compared with a cake recipe. Ideally it provides a list of the key inputs (human and material) and steps on the way to satisfaction of all parties. Work approval, payment, mediation and related quality management concerns are ideally handled in related industry and government contexts. For example, the information provision and mediation process for consumers and traders offered by the NSW Office of Fair Trading was free, clear, fast and useful in my very limited experience as a member of a body corporate in Glebe, when we disagreed about appropriate property developments. Providing more information was enough in our case.

The NSW Environmental Planning and Assessment Act (1979) states it aims to achieve openly consultative and integrated approaches to economic, social and environmental issues in land use planning, which includes construction. One assumes the ideal industry direction is in a context where all are increasingly concerned about preserving land and water quality, reducing carbon pollution, reversing deforestation and loss of biodiversity, avoiding rural and urban over-population and fixing the related lack of sufficient employment, education and access to many other basic services that avoid disorder, so that everybody can have a better situation. Better communication, energy and public transport systems are crucial to support these aims. Many funds which government and industry have built up since the 1980s now appear ideally to be managed more openly in regional public, private and related community partnerships to try to balance and help achieve their key economic, social and environmental goals for current and future generations.

In its discussion of mining, oil and gas in the PC Annual Review of Regulatory Burdens of Business, the PC stated that government regulation has the following objectives (p. 168):

- Managing the natural resource – providing an appropriate return to the community from the granting of exploitation rights
- Ensuring the safety of workers
- Protecting the environment

One wonders how the PC, government and industry define the community and how broad the related environment is conceptualized as being. For best results, managers need to understand and implement the logic of their production chains to achieve the interests of key stakeholder in broader environmental contexts, rather than being driven by the more narrowly informed interests of the stockholders at best, or the financial managers at worst.

Coordinate quality and risk management openly at the project, organization, industry, state and national levels to meet economic, social and environmental goals

The National Expert Advisory Group on Safety and Quality in Australian Health Care (1999) advised health ministers to support national actions for safety and quality related to strengthening the consumer voice and learning from incidents, adverse events and complaints. From this perspective, any dispute resolution should logically be managed as a social service, like health or education provision, which aims to improve community

health and related social or environmental outcomes. Quality management is closely identified with risk management and may be defined as a way of achieving continuous improvement in production and its outcomes. It is a logical and systematic method of identifying, analysis, treating, monitoring and communicating risks associated with any activity, function or process in a way which will enable organizations to minimize losses and maximize opportunities. It begins with the establishment of the strategic, organizational and risk management context in which action will occur. The next step is to identify and analyze risks in order to assess, prioritize and treat them. The final step is to monitor and review performance (AS/NZS Risk Management Standard 4360 – 1999).

In 2008 the Deputy Prime Minister and Minister for Employment and Workplace Relations appointed the Hon. Murray Wilcox QC to consult and report on the government commitment to establish a specialist division within the inspectorate of Fair Work Australia (FWA) for '*the building and construction industry*'. (They are my italics). See the discussion attached on the need to use Australian and New Zealand Standard Industrial Classification (ANZSIC) definitions for quality management and related broadly scientific approaches, rather than interpretations based on court processes. Although the terms of reference for Murray Wilcox addressed the topic of the building and construction inspectorate division of FWA, a related confusing aspect of discussion was the future of the Building and Construction Industry Improvement Act (BCII Act 2005) This Act established the Australian Building and Construction Commission which the Prime Minister stated will be abolished in 2010. The BCII Act was supposed to curb industrial unrest. The argument of the attached paper is that this can only be accomplished by better approaches to all construction management. The legal process is narrow, crazily complex and adversarial. It recognizes legal interpretations as distinct from common dictionary definitions, whereas the latter are vital for scientific approaches to management. The legal process promotes conflict and cost, not better management.

Australian standards and other codes of practice ideally support state occupational health and safety legislation and assist risk management. People are expected to apply relevant codes unless the evidence is that another course of action is preferable for good reasons in the specific situation under consideration. This approach provides the legislative context for a generally more independent and informed approach to work, which can be compared with the scientific, evidence based approach required of health workers. For example, a health worker is ideally expected to diagnose a client's problem and to apply treatment after consultation and consideration of the relevant body of scientific evidence or related expert protocols. However, the treatment may vary as far as this appears to be necessary to meet the specific health needs of a specific individual or situation. The reasons for any deviation from the generally expected expert practice are documented. Ideally, all such information may contribute to research aimed at improving the overall outcomes for particular communities and individuals, in the light of the study of a broad range of specifically grouped environments, concerns, treatments and outcomes.

In 2009, the NSW Attorney General's (AG's) Department produced an 'ADR Blueprint Discussion Paper' which suggested a 'Framework for the delivery of alternative dispute resolution (ADR) services in NSW (April 2009). Chief Justice Spigelman also suggested

the United Nations Commission on International Trade Law (UNCITRAL) Model Law should be adopted as the Australian arbitration law. It certainly seems clear and he argues that it would be a workable regime if it were adopted as the domestic Australian arbitration law as this would send a clear message to the international arbitration community that Australia is serious about a role as the centre for international arbitration. He stated that Australian competitors, like Hong Kong or Singapore, do not create a rigid barrier between their domestic and international arbitration systems and that neither should Australia.

The Chief Justice also claimed that ‘The focus on commercial arbitration as a form of commercial dispute resolution has always offered, but rarely delivered, a more cost effective model of resolution of disputes’. Doug Jones, of the Australian Centre for International Commercial Arbitration, commented that arbitration is still:

.....expensive and hugely inefficient, forcing many companies to prefer expert determination – due to a combination of arbitrators failing to insist on processes different to courts, and lawyers.....continuing to insist on intricate pleadings, excessive discovery and prolonged hearings. We need reform to distinguish arbitration from court processes.

The above is the natural outcome of ADR being captured by state registered lawyers, who pursue their own monopoly interests, rather than the interests of people using ADR or those of the broader Australian community. To establish an ADR Directorate within the NSW AG’s Department to coordinate, manage and drive ADR policy, strategy and growth in NSW, as recommended, is like putting the vampires in charge of the blood bank – for the umpteenth time. It would make more sense to establish an ADR Directorate as part of a relevant national body to liaise with other relevant industry, government and community bodies, so as to be free from lawyers’ domination. Lawyers must look forward to the past.

Home Warranty insurance is ideally now considered in related national and state risk management contexts, along with other national and industry services and insurances such as workers compensation, Medicare and any additional private health or accident insurance. The NSW government has stated that it will take over the home warranty insurance scheme from 1.7.2010. According to a paper by the NSW Parliamentary Library Research Service (Roth 2010), the government has said the new scheme will be:

- Underwritten and capitalised by the Government and funded by insurance premiums
- Managed by Treasury through the Self Insurance Corporation
- Operated by private sector providers, which will provided services relating to the issue of project certificates, collection of premium and claims handling

Australia’s oldest enterprise based system of health and social insurance is workers compensation, established at the turn of the 20th century. Historically, state workers' compensation schemes have been repeatedly established either as government monopolies or with competitive insurer underwriting, depending on the political persuasion of the government in power. There is now increasing commitment to national uniformity based on

the managed fund model of service delivery first introduced by the NSW Labor government in 1987, in addition to requirements for work related rehabilitation services. Under this social insurance model, the government and industry own the premium pool and underwrite the scheme. A statutory authority with a board of experts drawn from government, employers, workers and insurers establishes the level of benefits for injured workers, and the level of premiums. It licenses a dozen insurance companies and pays them to collect premiums, administer claims, invest funds, and collect data on its behalf. Government and industry then own the funds and reap the benefits of their investment and related quality management. Very large employers may also be approved to self-insure.

Australians face an enormous range of incomprehensible laws based on narrow and outdated assumptions, which often have no clear objectives or supporting definitions. However, the Superannuation Industry (Supervision) (SIS) Act 1993 seems excellent as it has objects, definitions and key requirements which seem comparatively clear and well directed to assist good investment practice. In a democracy which embraces science, law that is interpreted in courts is crazy. UN Conventions and related instruments which countries are encouraged to adopt are comparatively clear and short, even if one does not necessarily agree with all of them in general or in specific applications. All relevant standards and evidence related to any problem and its environment ideally guides its resolution. People ideally should be able to consider, respond to and judge matters openly and dispassionately, like scientists who broadly gather evidence about all relevant issues. Adversaries should not be encouraged to promote their own rotten pudding made in secret long before they end up in courts that deliver evidence only in very narrowly driven, rule bound, adversarial, expensive ways.

Communication for skills development, broader education and research

In an article entitled ‘Back to the future: Restoring Australia’s productivity growth’, delivered in November 2009, Gary Banks, the Chairman of the PC argues that the evidence is that for productivity growth in future, Australia requires the following most:

1. Removal or reform of unproductive industry assistance
2. Removal of regulatory burdens and the avoidance of adding new ones and
3. Rethinking infrastructure

This can be partly achieved through open dissemination of quality curricula. As well as development of skills to meet specific shortages, many open education models for community and industry management to achieve sustainable development are necessary. An Open University (OU) approach to education is also recommended. An OU meeting I attended in Milton Keynes in England (29.5.08) first stressed the importance of quality, access and scale in OU curriculum production and dissemination. The reason for the establishment of the OU is to make higher education available to many more people through TV, videos, the internet and books. All registered OU students have access to an approved tutor – local or online. I assume all education provision should aim to be in line with commitment to affordable, accessible, high quality, greener services.

According to the Digital Dividend Green Paper, the Australian Government's primary policy objective in relation to the digital spectrum is to maximize the benefit that use of the spectrum will bring to the Australian community and economy over time (p. 5). The Prime Minister (2009) listed the following key Challenges for the Future and these are ideally also the social goals which governments and many related industries and communities should support competitively, through investment in development of the digital spectrum and to inform members of diverse regional communities:

- Delivering an education revolution to build the skills that Australia will need as the economy recovers
- Ensuring that every Australian can get the health care they need when and where they need it
- Building a lower carbon economy and creating the low pollution jobs of the future
- Securing water supplies for our cities, towns and farmers, and acting to restore the health of our rivers; and
- Implementing a new way of governing that is more open, accountable and in touch with the community

It is hard to see how broadband development, which is an essential service for Australians, backed by government, could be considered anything other than a low risk investment opportunity suitable for industry superannuation funds and others. This superficially also appears to be an investment with natural development multiplier effects for many Australian industries and related communities. Implementation of the G20 London Summit Leaders Statement and Declaration on Strengthening the Financial Systems (2.4.09) requires consideration in related global and regional development contexts in which carbon pollution reduction and offset development demand attention to introduce triple bottom line accounting – which is environmental, social and economic.

In this context attention is also drawn to the National Human Rights Action Plan of China (2009-2010) from the Information Office of the State Council of the People's Republic of China and also to the '*participatory rapid appraisal*' research and learning project led at Sichuan University in Chengdu Province by Yuan Hong-Jiang, Professor of health promotion research and the needs of the elderly, and undertaken with European Union support. The research method involves flexible and informal on the spot analysis; undertaken in the community; using knowledge people already have; to build capacity to solve problems and to promote community level work in a way that is faster, cheaper and more accurate than most traditional academic research. Combined with additional open and flexible education, this is a method like risk management or action research, which many Australian, Chinese and other workers will hopefully also recognize. Projects and their clear and effective management may also be developed upon this easy learning base.

Attention is also drawn to the fact that the Council on Australian Latin America Relations (www.dfat.gov.au/coalar) is currently seeking funding applications for projects in 2010-11 with a closing date of 18th June 2010 to 'enhance and strengthen links between Australia and Latin America, particularly in the areas of business, education, sustainability, tourism and cultural promotion' and for associated reasons. It would be

good if increasing international consensus about risk management education, research and related human rights directions could be established in construction and beyond.

The suggested 'killer apps' for this direction are **Email**, because it allows remarkably fast and broad communication. It is easy to use and also leaves a helpful and well organized record for further evaluation. **Google** is revolutionary in providing immediate access to the most wonderful range of reasonably reliable information that we have ever had. In my view, comparison makes sorting for information quality easier, not harder, as traditionalists claim. This immediate access is central to managing projects to achieve social, environmental and economic goals well and fast. **Powerpoint** may assist the non-English (or other language) speaker to understand the heart of the issues discussed more fully elsewhere. **Videos**, like the kind the Sydney Morning Herald gives customers for free would be excellent for many purposes, like skills development and on TV.

The ideal aim is to improve the quality of all business operations through better planned and coordinated, more transparent and cost effective work, assisted by better data driven management. A broader and related aim is to coordinate and achieve health and other social or environmental goals of any business, industry and related regional communities, as well as the financial ones which normally drive markets. Thank you for the opportunity to make this submission.

Yours truly

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