

**GETTING ENVIRONMENTAL REGULATION RIGHT (2009):
SECOND SUBMISSION TO THE VICTORIAN COMPETITION AND
EFFICIENCY COMMISSION INQUIRY INTO A SUSTAINABLE FUTURE FOR
AUSTRALIA**

**BACKGROUND FOR UNDERTAKING STRATEGIC ASSESSMENTS FOR
REGIONS WITH COMMON ENVIRONMENTAL ISSUES**

The Victorian government asked the Victorian Competition and Efficiency Commission to identify:

- The type of environmental regulation with the highest regulatory burden
- Victoria's largest regulatory opportunities for, and barriers to, maximising the economic benefits in the transition to a low carbon economy that responds to the state's emerging environmental sustainability challenges.

This is my second submission to the above inquiry, which also responds to the Commission's draft report entitled, 'A Sustainable Future for Victoria: Getting Environmental Regulation Right: Overview and Recommendations (2009)'. The current submission primarily addresses the Commission's draft Recommendation 6.2:

That the Victorian Government assesses the potential to use strategic assessments for regions with common environmental issues.

In addressing this recommendation the submission first suggests more regionally and organizationally balanced and scientific methods of operation and assessment to meet regional industry and community goals which are economic, social and environmental. This approach contrasts with many more one-dimensional, narrowly regulation driven, prescriptive and therefore unrealistic modes of operation that laws may require and inspectors scrutinize occasionally. Such practices occur to the detriment of all those who must suffer them, while the principle secret financial business tries to carry on as usual.

Secondly, the submission discusses some of the new financial requirements of the Group of 20 Leaders Summit held in London on 2nd April 2009 as a result of the current international financial crisis. The prescribed private or public funds non-profit management model, addressed in the Australian Treasury Paper entitled Improving the Integrity of Prescribed Private Funds, is suggested for consideration by industry superannuation fund managers, governments and others, as a way of supporting projects aimed at improved social welfare and a low carbon future. Many such projects currently appear unachievable because of the national and state accretion of centuries of regulation, including comparatively recent protection for polluting industries, which is increasingly dysfunctional for meeting international economic, social and environmental goals. The G20 called upon the International Monetary Fund (IMF) to provide concrete proposals for spending at the Spring Meetings. Help it do so by proposing Treasury model projects.

The regional, more scientific development perspective which is proposed also seeks to meet the following requests (p. 65):

The Commission invites views on the adequacy of existing language and guidance to define and resolve conflicts between economic, environmental and social objects

The Commission seeks comment on options for simplifying and improving Victoria's environmental legislation and the corresponding organizational framework

The commission invites comments on the form of carbon rights that would facilitate forestry carbon trading and the benefits of a nationally uniform approach.

The Commission states that 'effective and efficient regulatory processes should seek to achieve outcomes that are a 'synthesis' of economic, environmental and social objectives'(p. 24). What do the writers mean by a 'synthesis' (*their inverted commas*)? Does it suggest they think that environmental and social objectives can be reduced to economic indicators or objectives? If so, this puts the cart before the horse – as usual.

My previous submission, among other things, addressed the fact that economic goals ideally serve the social end of enhancing life and its associations, which cannot be achieved or measured only in financial terms. This broad scientific perspective contrasts with the pre-scientific assumption of lawyers and some related economists, which is that markets will perfect themselves and naturally benefit all in every way, if only the market players are left to their own secretive devices. In this brutally impoverished and distorted version of reality the key roles of government are as a defender of the faith and to ensure that unnatural monopolies are broken up by lawyers. Such views of market operations, which remain embedded in the Trade Practices Act (TPA) are wrong, as discussed in related attachments and demonstrated by the current international financial crisis. Law compels its practitioners to be one eyed savages promoting the value of being polite.

In his report on national competition policy, Hilmer 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). If adopted, this could have led naturally to the kind of management partnerships using triple bottom line accounting – economic, social and environmental – necessary for sustainable development and all related environment enhancement. One wonders why the report was reduced to additions to the outdated TPA. Hilmer's approach needs to be revived, understood and treated properly. Get past the feudal financial savages and their helpfully stupid handmaidens. Learn about the future from the Chinese and stop giving them infantile lectures about human rights. Do you think Chinese governments have never thought about human rights? They have come from feudalism to the current state in less than a century with upheaval of all institutions. The Australian Human Rights Commission, or anybody else as far as I can see, does not even have the honesty or courage to inquire into the extent to which courts and lawyers may remain feudal institutions and what this may cost the people. If I were the Chinese government I would be angrily contemptuous of such a rich little pot calling a kettle black. Discuss abolishing the Australian Constitution because of the outdated arrogance of fixing the top law to bind all future generations. (Was this scientific?) Challenge all stupid or obnoxious men who bind us. (However, I can see why it seemed a good idea at the time.)

SUBMISSION GOAL: MORE SCIENTIFIC APPROACHES TO DEVELOPMENT

This submission argues that program and project planning and evaluation should be primarily undertaken from regional and related industry and community perspectives which seek economic, social and environmental goals. The aims and key requirements of related legislation should be openly and flexibly applied and evaluated in such regional industry and community contexts to obtain the best balance of outcomes, not be driven prescriptively in their own right. To do otherwise is bureaucratic madness because the Commission points out that the broad reach and complexity of Victoria's framework of environmental regulation alone, indicates 43 environmental acts and over 9000 pages of related legislation (p. 37). This cannot be rationally addressed in isolation from the related geographical, industry and community contexts in which it is ideally applied as openly, flexibly and scientifically as possible, along with other legislation relevant to the context, to achieve all key goals competitively. The lawyer's perspective, which pursues a single piece of legislation made increasingly stupid over time, is mad. Yet this narrowly aggressive, rule bound male perspective has ruled us all for centuries and also created the many problems of bureaucracy that Weber wrote about. The answer to such problems lies in more natural and modern communication, education and accountability. (I love SBS, ABC, the Fairfax press, Google and the movies more than the other dolts.)

Since the 1960's, the development of the Australian national reserve system has been based on the biodiversity related principles of comprehensiveness, adequateness and representativeness (CAR). These international scientific principles are directly related to the development of the Interim Biogeographic Regionalisation of Australia (IBRA) system which divides Australia into 85 distinct biogeographic regions and 403 sub-regions. IBRA provides a scientific land planning framework and tool which should aid development proposal evaluation and the realization of the CAR principles in the related development of all national and regional planning for more sustainable development.

It is vital for any scientific process based on the identification and attempted satisfaction of key economic, social and environmental goals that all legislation has clear aims and definitions of key terms. (Much legislation does not.) For example, those engaged in trade are ideally defined simply, consistently and clearly, in related industry and community contexts, unless another course of action is appropriate for good reason. The Australian and New Zealand Standard Industrial Classification (ANZSIC) and related occupation classifications are based on international classifications designed to assist the process of more scientific management. Ideally, ANZSIC classifications should be incorporated into all industry management and related scientific practices unless there appears to be good reason to do otherwise. Recent Productivity Commission reports appear to have supported this industry development direction which is also necessary for transparency and cost reduction, as well as for more scientific management. Legal and financial interests have been hostile to such development because it would greatly inhibit their capacity to take other peoples' money by using controlling and confusing language, preferably numerical, when forced from the alternative practice of secret action. (How would you feel about the US if you were Asian or South American? Heaven knows?)

The United Nations (UN) and its key agencies, the World Health Organization (WHO), the International Labor Organization (ILO) and the UN Education, Scientific and Cultural Organization (UNESCO) define a community as:

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

The types of categorization outlined above ideally create a regional and organizational planning framework in which all economic, social and related environmental goals may be more rationally and openly pursued and their processes and outcomes compared through the balanced application of clear key legislative aims and the evaluation of all related regional and organizational practices. Economic management is addressed later in this context. (See attached related submissions to the current NSW Legislative Assembly inquiry on managing climate change impacts on biodiversity.)

THE DEVELOPMENTAL ROLE OF MORE SCIENTIFIC ENERGY POLICY

The aim of the London Summit Leaders Statement of the Group of Twenty on 2.4.09 is to restore confidence, growth and jobs by repairing the financial system and restoring lending. Some related aspects of this central task are discussed later. Future development must also be undertaken in the light of earlier international commitments in a new international planning context which also requires regional partnerships by government, industry and communities to achieve the goals of sustainable development more competitively, led by the reduction of greenhouse gases and related offset investments. The recent Australian and Indonesian leaders' agreement on forests and carbon trading, which reflects the new importance of biodiversity protection and climate change in regional relations, is ideally considered in this context. More open and clear communication would be good. The Association of South-East Asian Nations provides a model of regional cooperation which could be expanded to address climate change and loss of biodiversity in a coordinated manner. A financial model is suggested later.

Richard Holbrooke, Chairman of the Asia Society, wrote that the two largest producers of greenhouse gases are the US and China and that their cooperation is essential for a solution to the climate change challenge. In 2007 the Asia Society assembled a group of experts from science, business, academia, politics and civil society with representatives from the Council on Foreign Relations, the Environmental Defence Fund, the Brookings Institute, the National Committee on US-China Relations, the Pew Center on Global Climate Change and others. They explored how the US and China could cooperate on energy and climate change policy and projects to address the problem of climate change and enhance the economic prospects of both nations while conferring on neither an unfair competitive advantage. The resulting 'Roadmap' acknowledged an overwhelming scientific consensus that human-induced climate change poses grave economic and environmental risks and that because this is a consequence of soaring global use of fossil fuels, a fundamental transformation of energy systems in both countries as well as world wide will be required, through the development and use of new technologies and new

energy sources to enhance the diversity, reliability, independence and ‘greenness’ of national energy supplies. (Pew Center website)

My last submission to this inquiry therefore addressed Draft recommendation 7.9:

That the Victorian Government develop and publish performance monitoring and evaluation strategies to assess the impact of the current regulations and any changes implemented

The submission argued that the point of the new National Greenhouse and Energy Reporting (NGER) Act is ideally scientific. The legislation seeks to assist control of a specific hazard – greenhouse gas emissions – by establishing audit practices within the 1000 largest polluters in Australia. This leads to acquisition of related permits for trading. A management systems audit may be acceptable once agreement is reached on how best to measure the greenhouse gases. However, the aim of the NGER Act is the measurement of noxious emissions. Once the best processes for measuring them are agreed and more consistently applied, only then can the emissions be treated more objectively for financial and related purposes. My earlier submission accordingly suggested a scientific audit, research and education process which could be applied to replace many earlier mandatory reporting programs listed in the Commission’s Report (p. 34). This would have the advantage of reducing the number of auditors and lawyers who would otherwise turn what they do not understand into numbers for the ignorant to invest in. What does Figure 6 entitled Draft Framework for Decision-Making Under Uncertainty (p.45), produced by PriceWaterhouseCoopers mean, and how it could be sensibly applied in any related scientific context? It seems part of the problem of global confusion, not a solution to it.

Sant and Kinsley pointed out that energy independence has been the policy goal of US government for 35 years (Australian Financial Review (AFR) 16.12.08, p.54) and this is an exception to the policy of free trade. The Chinese economic direction, as outlined in November 2008 by Xhou Xiaochuan, Governor of the Peoples’ Bank of China, is that China will maintain stable economic growth by boosting domestic demand and reducing dependence on external demand. The Australian management of climate change and the protection of biodiversity require coordinated consideration in this international context. The quest for energy independence appears necessarily envisaged as a form of national protection which also strongly assists the creation of a new world order where the major goal of governments is to enable sustainable development for all through new, green jobs in partnerships with industries and communities which also value biodiversity highly.

To bring this about, many more openly educational, sharing and competitive supporting institutions are necessary instead of the many closed, costly and dysfunctional ones lawyers currently guard. The Productivity Commission (PC) recently held a review of regulatory burdens on the upstream petroleum (oil and gas) sector (2008). It is logical that all production related ‘value chains’ for sustainable development are now ideally developed not only through linear concepts like ‘upstream’ and ‘downstream’ production, but also from production clearly conceptualized in geographic arenas. This requires government, industry and community cooperation to achieve many global and local aims

together and competitively. It also requires an open education revolution. Putting all the key legislation or other standards which relate to mining and protection of its environment on websites in a short and readable way would be a start. (Much tertiary education is currently highly contaminated by lawyers and their related feudal muck.)

KEY DIRECTIONS FOR STABILITY IN INTERNATIONAL CRISIS

The Leaders Statement and the Declaration on Delivering Resources Through the International Financial Institutions which were both signed in London on 2.4.09 state that the signatories have agreed to make available an additional \$850 billion of resources through the International Monetary Fund (IMF) and the multilateral development banks to support growth in emerging markets and developing countries by helping to finance counter-cyclical spending, bank recapitalisation, infrastructure, trade finance, balance of payments support, debt rollover and social support. They also support a substantial increase in supervised lending of at least \$100 billion by the Multilateral Development Banks, including to low income countries. A new Financial Stability Board, which includes all G20 nations, is to be established to collaborate with the IMF to provide early warning of macroeconomic and financial risks and actions to address them.

The above documents are vital reading for understanding the new international direction. They seek broader and more stable international financial management, which creates countervailing development to the current situation in which the US must borrow from the Chinese government and others or print money to deal with current financial crisis. Saving nations feel compelled to lend, or see the principal rich markets for their products disappear through a depression. On the other hand, continuing on past terms is not welcome. As Yu Qiao, Professor of Economics in the School of Public Policy and Management at Tsinghua University points out, the key issue for Asian countries is the safety of their assets denominated in dollars, as they look ahead to a devalued dollar from rising US sovereign debt. Rather like a Republican politician on News Hour on TV, Yu Qiao argues Mr Obama's stimulus spending appears devoted to social programs rather than growth promotion, which may exacerbate America's over-consumption problem and delay sustainable recovery. The unprecedented fiscal stimulus the Federal Reserve is injecting into credit markets to unlock lending may also contain self-destructive seeds.

In an article entitled 'Ratings agencies carry on as if nothing has happened', in the Sydney Morning Herald (SMH Weekend Business 5, 28-29.3.09) Ian Verrender attacked international ratings agencies such as Moody's Investor Services, Standard and Poors and Fitch, which designate those institutions and financial products that are supposedly risky or safe to invest in. Verrender points out that their inability to rate reliably misinformed the market and played a major role in the dotcom and Enron collapses, as well as in the current financial crisis led by mortgage backed securities. Australia has been comparatively lucky so far but try telling that to those of us who have lost retirement or other investment income, businesses, houses or jobs. I bet all those of us who have never been gamblers are totally livid with hatred. The ratings system involves a huge conflict of interest. Those with the financial product to sell, not the client or the investor, pay for the rating, as it is easier for the product seller and the ratings agencies to make money

that way. Those with a product who do not pay the ratings agencies have their operations downgraded. As major financial crashes have repeatedly shown top stability ratings to be worthless, financial practices should not now be back to business as usual.

At the G20 Meeting of Finance Ministers and Central Bank Governors in Brazil, in November 2008, Xhou Xiaochuan, Governor of the Peoples' Bank of China attacked financial ratings agencies. He pointed out their conflicts of interest and the related problems of the Nationally Recognized Statistical Rating Organizations (NRSRO) structure, in which a handful of quantitative analysts' financial models dominate and are then correlated throughout the global financial system. This adds massively to systemic global instability. He argued that the institutional users of credit ratings, such as money managers and financial institutions, should be required to complement external pricing models with the internally developed capacity to judge risk. Organizations should be held accountable to their customers and shareholders by exercising their own judgment, not merely by outsourcing risk assessment to ratings agencies. To give organizations issuing financial products more incentives to better assess their risks, regulators should also ask them to retain a meaningful share of the underlying assets on their balance sheets in order to alleviate the problems associated with the 'originate to distribute' business model, which includes moral hazard and related fraudulent loan underwriting.

Xhou Xiaochuan also discussed fair value accounting, mark-to-market and mark-to-model accounting. He writes that the Generally Accepted Accounting Principles (GAAP) which are accepted world wide define fair value accounting as the price at which an asset and liability can be traded with a willing counter party in an orderly manner. Mark-to-market prices can be used when there is an active market which can be observed to measure the value of prices and liabilities. When there is no active market, prices are assessed by using models with observable parameters as inputs. Fair value accounting requires disclosure of the valuation approaches and assumptions as well as risk exposures and related market sensitivities. However, the problems of fair value accounting have also been exposed by the current financial crisis. Compared with the historical cost accounting approach, fair value accounting intensifies market fluctuations. While the fair value approach is more dynamic and may better reflect real time values of assets and liabilities, it also magnifies the changes in their apparent values and increases the volatility of returns through the profit and loss account as a consequence.

Xhou Xiaochuan calls for a corrective to the market instability caused by mark-to-market and fair value accounting in specific situations and draws attention to the new Basel Capital Accord (Basel II) released in 2004 which requires regulated minimum capital requirements of 8% as one of the pillars of banking supervision. It also requires the concept of risk weighted assets to reflect not only credit risks, but also market risks and operational risks. He suggests the Basel II framework be supplemented by the issue of quarterly indicators of prosperity and stability, to be used for risk rating purposes and to counter cyclical instability. (Key speeches are on the Peoples' Bank of China website.)

In late 2008 the Chinese government adopted new measures to deal with financial crisis. It will invest an extra 4 trillion RMB over two years, mainly in the agricultural sector,

welfare and affordable housing, transportation infrastructure, energy conservation and emission reduction. An industry revitalization plan covering ten industries was also introduced to curb and reverse the trend of declining growth in these industries. The Peoples' Bank of China lowered the benchmark interest rates five times and reduced the reserve requirement ratios to promote stable growth of monetary and credit supply. Other measures to strengthen financial support and to promote employment and living standards to stimulate consumption and demand were also undertaken, including in health care provision and taxation. As indicated earlier, China expects to maintain stable economic growth by boosting domestic demand and reducing dependence on external demand, as a stabilizing force in the global economy.

CONSIDER AUSTRALIAN TREASURY PRIVATE AND PUBLIC FUNDS

Australia should act rapidly to assist the spring meetings of the IMF to achieve more openly competitive, broad and stable social and environment development, including the protection of biodiversity, in the above global context. Recommendations of the current Victorian and NSW inquiries on biodiversity and environmental regulation ideally assist this and also support global and national directions for carbon pollution reduction. Changing the current situation of global poverty, disease and environmental degradation through more effectively targeted superannuation and related national investment strategies is also now a major challenge facing Australia and many other nations. In the papers edited by Stiglitz (another US Nobel Prize winner) and Muet from the Annual Bank Conference on Development Economics, entitled 'Governance, Equity and Global Markets' (2001), Attanasio states that:

'The lack of synchronization between demographic trends in the world constitutes an important opportunity to reduce the impact of demographic changes on pension systems. Northern capital invested in less developed regions could yield higher returns to finance the retirement of the US and European baby boomers and at the same time could help the development in Latin America and other developing regions' (p. xvi)

This is also the global and national context in which the following propositions are made to UniSuper to which I belong and to other funds. Give us more financial stability. Be more open and competitive. Act nicely for a change instead of apparently mindlessly.

For example, the March 09 edition of Super Informed, like the last one, points out the comparatively poor performance of 'socially responsible' funds. Although it states these are 49.5% in Australian shares, 40.5% in international shares, 5% in alternative investments and 5% in property, no further explanation is provided. Apparently the socially responsible option is managed externally by a manager that applies 'its own tolerance range'. I want much more information about why they think the funds are socially responsible and what is done with them. For example, I have no faith in the ethical management capacity of AMP Sustainability; AMP Sustainability Balanced; BT Australian Sustainability Fund; Dexia Sustainability (International); State Street Global Advisors (currency overlay) and wonder if they are still the managers. I would not trust them about anything and hope I have made it clear why this is so. Every day I seethe with

fury at the fact that my retirement savings are in the hands of such people. I consider taking all my money out and buying housing, like any sensible Australian, before they lose the lot. UniSuper is very vague about property. Where and what is the bloody property?

I would much prefer to have a modest pension from my superannuation related to my university employment, as I currently do with State Super, as a result of having been a public servant. I would also like to be able to invest (as distinct from throw away) my money in development I approve of, rather than development which is fast destroying all non-human life on the planet. The City of Sydney submission to the NSW Solar Feed-in-Tariff (FIT) taskforce pointed to a recent study by the Institute for Sustainable Futures which found that of total energy and transport subsidies in Australia between \$9 billion to \$9.8 billion supports fossil fuel production and only \$317 million to \$333 million supports renewable energy technologies. The subsidies for renewables are only 3.1% -3.6% of those contributions going to fossil fuel production. The City states it is vital to redress this imbalance which runs counter to the Federal Government's stated aims of reducing greenhouse gas emissions and their impacts. This is a common problem in many industries which appears inevitably to be reflected in investment performance.

In the above context, and given the non-profit status of industry managed superannuation funds, the Australian Treasury paper entitled Improving the Integrity of Prescribed Private Funds (PPFs) suggests a potentially ethical way forward towards more open, greener investment which can also cut fees and charges, provide more market stability, and be more internationally competitive. According to the Treasury paper, PPFs came about in 1999 as a response to a report on philanthropy in Australia by the Business and Community Partnerships Working Group on Taxation Reform. A PPF is a trust (which is a pool or stock of assets, as distinct from an institution) to which businesses, families and individuals can make tax deductible donations for the purposes of disbursing funds to a range of deductible gift recipients. A PPF cannot distribute to another PPF or to a public ancillary fund (PAF). The PAF is also a common structure for community and fundraising foundations. With the exception that they need not seek contributions from the public, and control requirements, PPFs have the same characteristics as PAFs and accordingly must comply with all the other requirements of a public fund. If such funds can appropriately generate tax deductions, on the grounds of equity of contributor treatment they ought also to be able to generate pensions as an alternative to the old age pension for investors who have retired from work. They deserve much greater consideration by superannuation fund managers, governments and others. Ideally I want to invest in suitable Australian PAFs.

Thank you for the opportunity to make this submission,
Yours truly
Carol O'Donnell, St James Court.

