

ANYTHING OTHER THAN EFFECTIVE: THE NATIONAL ENVIRONMENT PROTECTION (USED PACKAGING MATERIALS) MEASURE

The Measure's overwhelming focus on 'consumer packaging' and therefore on what the householder does with waste seems unfair, narrow, inefficient and likely to fail

The aim of the National Environment Protection (Used Packaging Materials) Measure is supposedly 'to reduce environmental degradation arising from the disposal of used packaging and conserve virgin materials through the encouragement of waste avoidance and the re-use and recycling of used packaging materials by supporting and complementary and voluntary strategies in the Covenant and by assisting the assessment of the performance of the Covenant' (p. 6). The Covenant means the Australian Packaging Covenant which covers 'consumer' packaging but omits 'consumer' paper.

The Measure is unfair on the household consumer of packaging as distinct from the producer or consumer of packaging who is in business, because it expects the householder to undergo the difficulty and expense of reducing many growing and different types of waste matter, over which he or she often has no control, by taking it to many different places for re-use or for recycling. By ignoring key waste reduction, re-use and recycling responsibilities of businesses (the 'materials suppliers, packaging manufacturers, packing fillers, wholesalers and retailers of packaged products' and their client businesses), this Measure appears not only unfair but far too narrow and weak to achieve the aim of reduced environmental degradation. It is recommended that the aims of the Primary Industries and Energy Research and Development Act (1989) should openly drive the waste management process instead. This act aims to fund research and development to increase the economic, environmental and social benefits of production to the community by improving the production, processing, storage, transport or marketing of products to achieve the sustainable use and sustainable management of natural resources in a way that will also make more effective use of community and scientific resources while improving accountability for expenditure. This could be a job for Malcolm Turnbull, discussed later.

On the other hand, the use in the Measure of the term 'consumer packaging materials', is like the term 'consumer contracts', which is used in a recent guide to unfair contract terms disseminated by the Australian Competition and Consumer Commission (ACCC). Both terms are nonsense from the perspective of common English speech and the related common dictionary which those of us who are not lawyers have used since the 18th century. From common post-feudal and related scientific perspectives, which typically rely on dictionaries rather than court interpretations, there is a provider and a consumer involved in the exchange of any good or service, no matter whether the consumer is a householder or a business. The cost of continuing on a pre-Enlightenment route, which is embodied in many assumptions of the Trade Practices Act and the ACCC, is that it is increasingly hard to have a clear, logical, consistent, fair and cost-effective way of doing any business in Australia. (See later discussion of unfair contracts on this problem.)

The producer of waste who is in business has by far the greatest potential power to drive the packaging or wider waste production and related re-use or recycling group action.

The household consumer of packaged products has little or no power and is the weakest link in the production chain. The National Waste Policy paper points out that from 2002-03 to 2006-07, municipal waste increased by 34% and if this trend continues Australia may have a municipal waste stream of up to 22.4 million tonnes in 2020 (p. 28). An approach to dealing with waste which depends on the householder to drive the avoidance, reuse and recovery of materials by driving the recycling of waste is doomed to failure. It demands far too many people undertake a widening variety of recycling efforts for an increasingly packaged, variable and increasing range of products. On the other hand, this householder has no control over secret product production, processing, storage, transport marketing or manufacturing procedures. In this context it should not be surprising if an overwhelming percentage of the population remain too ignorant, or poor, or rich or busy to take any notice. Some of us chose to give up our cars to save money, encourage public transport and reduce pollution, yet are treated as recyclers as if we still should own them.

The householder focus in the Measure ignores many potential economies of scale which ideally may be achieved by broader regional management of production and the related reduction, re-use and recycling of waste by business, government and communities. Nearly all production depends upon the use of land and water. For this and related reasons the best way forward now may lie in the related evaluation by the Productivity Commission (PC) of the Rural Research Development Corporations in order to restructure them to achieve the aims of the Primary Industries and Energy Research and Development Act and of related manufacturing and service industries better. The aims of regional community management ideally serve the aims of the society and its economy and environment in a way which is as openly accountable and effective as possible. (See www.Carolodonnell.com.au for a subject like Society, Economy and Environment).

Definitions in the Measure reflect an unfair, narrow and inefficient reliance on the ‘consumer packaging’ concept and the consumer’s comparatively powerless driving.

The Measure’s definition of ‘recyclable’ packaging for a product is problematic. ‘Recyclable’ packaging means ‘reasonably able to be recovered in Australia through an approved or accredited collection or drop-off system and able to be reprocessed and used as a raw material for the manufacture of a new product’. The Measure’s focus on householder recycling, which also reflects the Covenant, thus suggests that whether a product is ‘recyclable’ depends primarily on the level of householder practice, and secondarily on the organization of producers in the packaging chain which are ‘materials suppliers, packaging manufacturers, packing fillers, wholesalers and retailers of packaged products’. This definition of ‘recyclable’ is political. Its measurement appears to depend upon the organization of regional communities and may act to increase inequality. An alternative definition of ‘recyclable’ would be primarily technological. This would draw attention to the lack of management and related technology in an environment, in order to improve it. The concept of ‘recyclable’ in this latter case would have similarities with the concept of ‘preventable’ as it is used in relation to diseases which often still exist for the poor because of their degraded environment and their lack of vaccines and health services. (See the attached and related discussion of ‘Australia’s Native Vegetation Framework’.)

The product producers - the ‘materials suppliers, packaging manufacturers, packing fillers, wholesalers and retailers of packaged products’ - have much more understanding and control over the nature of packaging and over its potential re-use or recycling through council tips and other government or private sector venues than the comparatively powerless and uninvolved householder will ever have over such a huge range of so many different products. The producers and government must be more involved over a broader range of production and related waste reduction and management issues together, to have an impact on the effects of production on environmental degradation locally or globally. (Look at body waste? I’d like my body to feed fish after I decide I’ve finished with it.)

Too much measurement shifts the regional focus from the key waste problems - the need for better production, processing, storage, transport and marketing methods through better industry and community management, research and development

One presumes that ‘materials suppliers, packaging manufacturers, packing fillers, wholesalers and retailers of packaged products’ are the major signatories to the Australian Packaging Covenant (which covers ‘consumer packaging’ except ‘consumer paper’). They thereby make a commitment to:

- Working together to achieve the overarching targets established under the Covenant
- Producing and reporting on public action plans with measurable actions that will deliver improved environmental outcomes appropriate to their production, usage, sale, recovery and/or reprocessing of consumer packaging and consumer paper
- Working cooperatively to develop good practice collection systems and markets, and education and promotion programs; and
- Providing data to assess the performance of the Covenant and progress towards the National Environment Protection Measure

The above primarily involves Covenant signatories and the related ‘brand owners’ in an enormous amount of predominantly householder and council generated information collection and reporting in regard to the weight and units of particular packaging material types used, re-used and recycled in Australia and through export. The brand owners are supposed to measure the total kilojoules of embedded energy recovered and the total weight of recovered material disposed of to landfill. Brand owners are also expected to record how consumers have been advised as to how packaging is to be recovered. This seem more likely to be an invitation to spend money on creative accounting rather than on reducing or recycling packaging by more broadly, openly and effectively designed waste management systems and waste management technologies. (Should one take Visy seriously in its efforts to reduce the levels of packaging it provides to others?)

Like ‘consumer packaging’ the Measure’s concept of ‘distribution packaging’ is not common language and reflects an unfair focus on the most powerless member in the production packaging chain – the household consumer – as a the person who is primarily expected to act as the waste reducer. She is expected to take many growing and different types of waste matter, over which she or he often has no control, to many different places for recycling. The Visy recycling centre at Taren Point in Sydney which is owned by one

of the richest families in Australia, and which I visited under strict controls, looks like something out of Dickensian England which is also a closely guarded secret. By ignoring the responsibilities of business related to the supply and use of packaging by producers, this Measure appears not only unfair but also far too weak to work effectively. It thus seems like one of many nasty mafia jokes. Providing people who get on the City of Sydney Council visitors' bus to Visy at Taren Point with plastic water bottles and other trinkets is not a substitute for providing an intelligent understanding of the full scope of the waste management industry and its relationships as it currently is and as it should be.

In this context, the concept of 'a free rider' seems unfair to many small businesses which are ideally expected to sign the Australian Packaging Covenant and to produce equivalent outcomes to those achieved through the Covenant, especially if they have little or no control over the nature of the packaging which accompanies the goods which they sell to the householder. What are the major categories of 'solid waste' referred to in the definitions of the Measure? Producers control and drive production, including packaging, not the householder. It would therefore be good to be given an understanding of the main range of materials which may logically be dealt with under the term 'solid waste'. This seems to be another of the business secrets acting to prevent us finding out about waste.

The Total Environment Centre approach to waste management seems unlikely to reduce the growing mountain of waste going to land fill rather than to material re-use or recycling, because its focus is also on the role of the comparatively powerless householder, rather than on the need for more government and business cooperation to reduce and re-use or recycle materials by better regional management to protect current and future generations. A vital example of this is the need for populations and environments in many places to benefit from cleaner water, rather than from the sale of more water in plastic bottles, which can only increase social inequality and major pollution. The Total Environment Centre approach to 'extended producer responsibility' (EPR) risks the diversion of funds away from technologies to make all production less polluting by placing a prior and heavy emphasis on measurement instead.

The Centre identifies the key elements of extended producer responsibility as:

- A financial incentive or support system that encourages maximum collection for recycling and provides a sustainable support base
- Regulation to prevent 'free riders' from undercutting those that have EPR products; and
- Targets, transparency and monitoring

This approach is reflected in the Measure's focus on the householder's comparatively powerless role in the manufacture, collection, re-use and recycling of packaging and other materials as waste. According to the Senate Standing Committee on Environment, Communication and the Arts report entitled 'Management of Australia's Waste Streams (including consideration of the Drink Container Recycling Bill 2008)' the Organization for Economic Co-operation and Development (OECD) defines 'extended producer responsibility' as:

1. The shifting of responsibility (physically and/or economically; fully or partially) upstream towards the producer and away from the municipalities; and
2. ***The provision of incentives to producers to take into account environmental considerations when designing their products.*** (my emphasis). While other policy instruments tend to target a single point in the chain, extended produce responsibility seeks to integrate signals related to the environmental characteristics of products and production processes throughout the product chain.

Such financial incentives and support systems are ideally provided by the carbon pollution reduction scheme and by potentially related government and industry programs, funding incentives and investments for which the Rural Research and Development Corporations (RDCs) provide key related goals. In a recent article entitled 'Visy's clean-cut vision' (Australian Financial Review (AFR), 9.4.2010, p. 6) Anthony Pratt said his vision was to make Visy the most successful sustainable private company in the world. He said, 'Any waste we can't recycle into packaging I want to turn into clean energy'. He seems unlikely to fail if he openly makes the effort?

The way forward in regard to waste and energy management

The PC issues paper on the RDCs asks whether there are significant opportunities for additional collaborative research effort across the RDCs which would have significant payoffs and where these unrealised opportunities may exist (p. 23). The answer lies in using the Primary Industries and Energy Research and Development Act aims (1989) to lead more sustainable development in regional industry and community settings. Better waste management is ideally at the centre of this, and development is probably a lot more necessary than research, in my experience. Fortunately the definition in the legislation of 'an R&D activity' is broad and sensible. (People normally love doing more research and hate implementation of the bleeding obvious because the latter is comparatively stressful and tends to upset so many people.) The Australian and New Zealand Standard Industrial Classification (ANZSIC) and related occupation classifications are based on international classifications designed to assist the required processes of more scientific management. Ideally, ANZSIC classifications should be incorporated into all industry management and related development practices unless there appears to be good reason to do otherwise.

Identification of regional industry, community and environment related skills needs and their provision are ideally driven by industry and the holistic approach to life pioneered by the World Health Organization. This is also reflected in the first principle of the United Nations (UN) Rio Declaration on Environment adopted in 1992, which is that human beings 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 also agreed to create an Asia-Pacific free trade zone by 2020, and supported protection of health and the natural environment. The sources of data the National Resources Sector Employment Taskforce should examine besides those immediately related to production, relate to those current and ideal services

and situations which appear most likely to improve the quality of life for their related communities, considered in their economic, social and natural environments over time.

In its discussion of community based rehabilitation, the UN defines a community as:

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

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 Regionalization 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.

In the above context, the NSW Environmental Planning and Assessment Act 1979 (EP&A Act) was also groundbreaking because its aims recognised the importance of openly consultative and integrated approaches to economic, social and environmental problems when making land use planning decisions. Consistent work and duty of care management approaches are ideally taken to protect workers, consumers, communities and natural environments which are harnessed in productive operations and in related communities and environments. A new direction was pioneered in Australian national health services, in state occupational health and safety acts and in related rehabilitation and insurance practices when they were made consistent with the holistic analysis and development approaches found in WHO and other UN instruments which Australia and other nations support. These protective directions now struggle against the historically dominant approach to managing risk, which is to conceptualize it as purely financial and to seek to spread it by passing it on. This often multiplies risks and costs for those who are not the originators of risk. These old risk management views have also led to global financial crisis, greater financial ignorance, increased social inequality, major business uncertainty, and huge destruction of biodiversity to the great cost to future generations. (See Stiglitz 'Freefall: America, free markets and the sinking of the world economy'.)

In regard to waste and related energy management, as in regard to climate change, over-emphasis on numerical targets is like long discussions about money, in the absence of a clear and flexible idea of the agreed directions for stable, low risk production to meet broadly and clearly identified environmental, social and economic goals. In the absence of clear and sensible project plans and development routes, endless numerical discussions about waste, energy, emissions targets and related money may be a comparative waste of time, used as an excuse for supporting the comparatively ignorant status quo, while doing little or nothing to improve the poorest situations which have been identified and which are ideally managed flexibly and competitively to achieve a stated range of improvements in stages. Open and clear management and accountability to achieve environmental,

social and economic goals are vital in this regional context and waste management is a key part of this as well. Population is ideally planned in this more protective context.

Stephen Nash makes a related point about investment in his article 'Cooper might miss the point' (AFR, 12.4.2010, p. 55). He argues that superannuation investment returns are essentially driven by asset allocation rather than financial sector fees although the Cooper review focus is on the latter. He states that Australian super funds currently approach the task of asset allocation from a perspective that is now antiquated whereby assets are allocated by firstly making assumptions about future asset performance. In other words, fund managers allocate according to assumptions of what they do not know – namely, future asset returns. Secondly, Australian super funds operate under the illusion that equities will provide a hedge against inflation whereas the available evidence is scant, even over the long term. He warns that under the circumstances, defined contribution superannuation structures present incentives to the fund management industry to take on more risks. As a naïve observer of these events one often wonders why the exercise of common sense and money to meet clear social, environmental and economic goals should necessarily be any more risky in national life than it is in the life of the stable individual who shuns the financial sector as geared to serving its mates and thus better left alone.

According to the National Resources Sector Employment Taskforce discussion paper (2010) Australian treasury modelling of the impact of current resource projects suggests business investment will increase beyond the direct estimate of \$112.5 billion up to 2013-14 because of demand associated with increase in commodity exports. Treasury estimates around two thirds of this will be spent on imported capital goods. In contrast, dwelling investment is expected to fall (this is, it is crowded out) because of higher demand raising interest rates (p. 67). This appears bleak news for people seeking housing and for renters anywhere in Australia. The powerful growth of mining and need for more workers in the industry seem also likely to lead to many demands for higher wages in the sector. This may lead to more industrial disruptions, to related loss of key productive capacity, and to increasing social inequality between those who work in mining and all those who work and live elsewhere. On the other hand, higher wages may not lead to a better quality of life for miners and their families, who are often forced to endure many hardships, including separations, harsh environments with comparatively poor food, entertainment and education as well as hard and dangerous work or enforced idleness for family members who lack the requisite skills for employment in the mining industry.

Many more balanced approaches to environmental, social and economic development are needed. The Treasury head, Ken Henry, has apparently recommended a resource rent tax that would push up the 'headline rate' facing coal and iron ore miners from 30% to 40% according to an article by Peter Martin (SMH 14.4.2010, Business Day p. 9). In return they would be freed from state royalty payments and would pay no tax until their profits exceeded a predetermined level. The Treasurer, Wayne Swan, is apparently embarked on a 'new normal' economic approach in which every bit of extra revenue which comes the government's way will be banked rather than spent and every new spending measure will be paid for by cutting an old one. Total spending will grow by no more than an inflation-adjusted 2 per cent a year until the budget returns to surplus. Total tax as a proportion of gross domestic product will stay below the level inherited from the coalition.

Miranda Devine suggested in a recent article (SMH 8.4.2010, p. 13) that Malcolm Turnbull should seek to lead the Liberal Party and to be Premier of NSW. However, one could go mad spending one's more mature years battling with lawyers, the representatives of public sector unions, and many variously related and often intransigent bureaucracies. Malcolm Turnbull might buy all the lawyers off in preparation for a republic, which is a frightening thought. In my view, Malcolm Turnbull's amazing range of commercial, legal, political and journalistic skills would be better used at the other end, in leading industry research, development and investment to assist the Prime Minister and the Australian people to achieve their key environmental, social and economic goals. It is hard to think of a person better placed to take on this task. I would also like to suggest that the Rural Research and Development Corporations adopt the logo of a giant cockatoo in a hard hat and overalls standing to attention by a petrol pump. That would get everybody thinking.

Thank you for the opportunity to make this submission.

Yours truly, Carol O'Donnell, St James Court, 10/11 Rosebank St., Glebe, Sydney 2037.