**SUBMISSION ON LOANS AND RELATED FINANCIAL MATTERS TO THE INQUIRY INTO A NATIONAL CONSUMER POLICY FRAMEWORK**

## INTRODUCTION

This is my second submission to the Productivity Commission inquiry into a national consumer policy framework. Its arguments support the recommendations made in my first submission and it provides other recommendations below. The current submission deals with the Australian financial system and issues related to the consumers' capacity to borrow money. It particularly addresses the Treasurer's requirement to consider:

> *The need to ensure that consumers and businesses, including small businesses, are not burdened by unnecessary regulation or complexity, while recognising the benefits, including the contribution to consumer wellbeing, market efficiency and productivity, of well-targeted consumer policy.*

In doing the required task, this paper also addresses the Treasurer's request to report on:

> *Any areas of consumer regulation which are unlikely to provide net benefits to Australia and which could be revised or repealed.*

This submission also responds to the same questions in the Productivity Commission Issues Paper (2007) as did my first submission. These were:

> *Is the current consumer framework fundamentally sound? Does it simply require fine-tuning or are more comprehensive changes required? What measures could be used to assess whether it is delivering for consumers?*

My recommendations are generated primarily by nine horrible examples discussed later.

## RECOMMENDATIONS:

**1. Key Australian financial systems, including those for borrowing money, are opaque and often managed in a secretive, complex and inefficient manner. When government or independent reports are written they should not be driven by the legislation they are ideally inquiring into, as this only increases current problems. Legislation and related contracts should have clear aims and key terms should always be defined according to a dictionary, not an interpretation. Program budgeting should be implemented openly in all government and related enterprises so service consumers and communities can judge comparative service outcomes.**

**2. Borrowing and the legal structures producing the distinctions between trading and financial corporations require review. In borrowing, the forced reliance on adversarial lawyers commonly generates huge and unnecessary complexity and cost in transactions involving housing as security. Current borrowing systems seem**

**designed primarily to maintain the control of lawyers over proceedings which generate fees for themselves and a group of other shady hangers on every time a contract is made or changed. (I highly commend Westpac for its use of big red warning stickers on contracts to borrow money which have been generated by property vendors, lawyers and their related companies, so as to establish an ongoing set of fees for themselves after successfully trading on the housing consumer's ignorance and fear of professional disapproval. Large lenders in the financial system should use these kinds of warnings more. They could save a lot of misery.)**

**3. In the consumer and national interest, the Treasurers and Shadow Treasurers should invite Australia's leading superannuation funds, which apparently also own MembersEquity Bank, to establish a more transparent, efficient and cheaper lending system than those which currently exist, by improving the structure and operations of the Members Equity Bank.**

Before discussion of nine horrible examples leading to the above conclusions, I refer to a related summary of my previous submission on a national consumer policy framework:

> *Hilmer's views on competition, as accepted by Australian governments, are very different from the outcome of their adoption into the Trade Practices Act (TPA). Hilmer saw competition as striving for goals which are not necessarily monetary, such as societal fairness, health and environment protection, whereas the TPA does not. However, to implement Hilmer, the TPA was amended in the context of its original, prescriptive approach to legislation. Consumers were then addressed in an addition to an increasingly illogical and expensive competition policy framework. This historically had implicit, monetary, goals and key terms have no definitions. This prescriptive, legislative approach appears generally unable to value conceptual clarity and consistency or the collection of data to assist injury prevention, rehabilitation or cost containment. It is ironic that a legal monopoly culture with so many feudal assumptions and practices has controlled law and related practice in regard to competition, while turning highly speculative economic theories into junk as a result of their legal reification. Hilmer's recommended competition policy principles should instead be enacted into new legislation and earlier, related legislation should be reviewed and repealed. This was the approach when state occupational health and safety acts were introduced. All engaged in work should logically have a duty of care to protect workers, consumers, communities and their environments. A related duty of care and industry based approach to management also provides the clearest, simplest and most comprehensive approach for effective management of all related risk. The alternative is a growing, highly expensive and dysfunctional legal mess.*

## NINE HORRIBLE EXAMPLES GENERATING THE RECOMMENDATIONS

### Example 1: The Senate Committee report of inquiry into transparency and accountability of Commonwealth public funding and expenditure (2007)

The above Senate committee report ignores program budgeting, in spite of the history of Wilenski's introduction of it to the public service. It recommends complex additions to the existing budget process which are likely to add to current budget opacity and all related cost. The committee concludes its recommendations are designed to restore the Parliament's historical and constitutional prerogatives. This is undesirable in an era where open partnerships with industry and communities are required to achieve national and regional goals related to health and sustainable development effectively, through fair and efficient competition. The Senate committee seeks to take Australia backward and its recommendations should not be adopted. ( I attach a related article on The Constitutional Past and the New Australian Ideal which I recently sent to the NSW Minister for Education and Industrial Relations, Mr John Della Bosca and others. I recommend it be generally followed instead of the Senate Committee recommendations.)

### Example 2: The Australian Government and Australian Law Reform Commission Review of Privacy-Credit Reporting Provisions (ALRC 2006) Issues Paper 32

The ALRC paper on 'privacy-credit' reporting provisions contains scores of complex questions. Many of them refer to the concept of 'credit reporting agencies'. Some ask about the concerns raised by the disclosure of personal information by credit reporting agencies to credit providers and also ask which persons or organizations should be permitted to obtain personal information contained in credit information files. However, the issues paper does not explain what credit reporting agencies are or how they may become involved in financial transactions. In general, the focus of Issues Paper 32 appears too narrow and its concepts are too poorly explained to meet the broad requirements of the Terms of Reference given by the Attorney General (p.3), particularly 'the desirability of minimising the regulatory burden on business in this area'.

My view is that when a person seeks to borrow money and can clearly demonstrate their credit worthiness, they should be able to sign a form which provides the potential lender with the right to access the relevant information that both agree demonstrates their credit worthiness. I can see no reason for middle men called 'credit reporting agencies', who appear only to complicate such loan transactions, along with many others I describe later, in relation to my personal experience. The writers of the ALRC issues paper need to explain more about the origins, functions and relationships of 'credit reporting agencies' and other middle men who stand between the borrower and lender. (Neither is the role of variously termed financial players much clarified by reading the Uniform Consumer Credit Code). Question 6-4(b) in the Review of Privacy-Credit Reporting Provisions (2006) is 'should we change the way in which credit reporting is regulated'? My answer is Yes! Let us save money, promote privacy and reduce the potential for corruption by cutting out middle-men who complicate the matter between the borrower and lender.

Some of the above issues are dealt with later in a personal context. In brief, I am currently borrowing money from Members Equity Bank – 'The Super Funds Bank' through structures which seem dysfunctional. Specifically, the lender in this transaction is identified as Perpetual Ltd. A Members Equity pamphlet states 'Perpetual Ltd. are our trustees who hold the $. We tell them the amount of money for settlement and they write the cheques. Perpetual Ltd must be noted on your building insurance as mortgagor'. Nobody can clearly explain to me why Perpetual Ltd. is involved in a loan I assumed I was undertaking with Members Equity Bank, which is owned by industry superannuation funds, including UniSuper, to which I belong. The current lending system seems designed to generate recurring fees for lawyers, Perpetual Ltd., the Department of Lands and the Office of State Revenue. Are there any credit reporting agencies involved in this system? Exactly why am I borrowing from Perpetual Ltd and how are superannuation funds related to Members Equity Bank? Why don't they set up a more rational system?

**Example 3: The Review of Privacy Issues Paper No. 31 produced by the Australian Law Reform Commission (ALRC 06)**

The ALRC claims in Chapter 1, the introduction to its issues paper for the review of privacy issues, that scholars cannot define privacy or state why it is important. I am no professor, but doing that seems easy to me. My pocket dictionary offers that **privacy** is: **Not open; not public; secret; personal, concerning an individual.** I also looked up **confidential**, which I regard as a synonym for **private**, and confirmed that it does indeed mean **private** or **secret**. In general, it seems to me that privacy and confidentiality are both the same as secrecy and that people want privacy in order to be able to:

- obtain a commercial advantage
- commit a crime or other breach of law without detection
- avoid public embarrassment, censure or harassment by others (e.g. the OECD Guidelines on Privacy are presumably established primarily to avoid this)
- stop intimates or others (e.g. wives, telemarketers) making calls upon them which they do not wish to know about or meet.

In spite of being unable to define privacy or state why it is necessary, the ALRC paper ask scores of questions and invite responses, presumably from lawyers. Question 1-2 asks whether a cause of action for breach of privacy should be recognized by the courts or the legislature. In general, the writers of the Review of Privacy issues paper cannot meet the terms of reference of the review, which asks about changing community perceptions of privacy, without going beyond the boundaries of the act itself. What the writers have done in chapter 1 is like promising a review of the bible without seeing the book as a product of a broader social environment. Undertaking an inquiry whilst being apparently blinkered by the act which is supposedly under inquiry, is not an intelligent approach to key problem identification and solving. Until one knows why a person or organization may seek privacy (secrecy) in regard to something, one cannot judge the consequences of their actions in moral and all related public interest based terms. Therefore, neither can one sensibly discuss what should or should not be in legislation.

The issues paper does not meet the terms of reference and should be condemned. (My answer to question 1-2 is to keep away from courts because their practice is feudal, rather than scientific. See my related article 'A healthier approach to justice and environment development in Australian communities and beyond' which was published in 'Administration Today, Oct.-Dec.2006, by the Institute of Public Administration of Australia (IPAA).

**Example 4: A legal dispute involving a loans system and Malcolm Turnbull**

In 2001, according to an article by Matthew Drummond in the Australian Financial Review (AFR April5-9, 2007, p. 41), Christopher Girtler had a company called Loanpos which was promoting software described as 'a point of sale credit application system that would provide instant finance approval from a range of lenders within 18 seconds'. The federal politician, Joe Hockey, put Girtler in touch with Malcolm Turnbull, a rich lawyer and then aspirant federal politician, who showed interest. Girtler then took Kosta Patsan into Loanpos as chief executive officer. Patsan offered Turnbull a share of the equity in Loanpos for $400,000. Turnbull said he was not interested. Patsan left Loanpos. In 2002, Patsan, Turnbull and his associate Russel Pillemer established a company called Finance Now. A group called Hillcrest Litigation Services then funded Girtler's claim of fraud and misappropriation of company property against Finance Now. They are also trying to link Malcolm Turnbull as a defendant against the claim. Hillcrest Litigation expects to get 30% of any damages awarded. According to Drummond, the judge will first need to determine whether Patsan misappropriated Loanpos' business plans. If so, and Turnbull is added as a defendant, the judge will rule on whether Turnbull knew, or ought to have known, that this was the case. Turnbull quit the Finance Now board in 2004 after winning the seat of Wentworth. If Drummond's description is right, the system seems crazy to me.

From my perspective, Drummond's stated issues for judgement, are not logically the central issues of the case he describes. It seems as if comparatively irrelevant questions about the wealth of both Finance Now and Turnbull will ensure that the case will not be settled out of court early or for a small amount. According to Drummond's account, the question of whether Finance Now actually turned a profit is of major interest in the case. (For reasons discussed later, I fail to see why.) Hillcrest Litigation Services calculated the net worth of Finance Now as $7 million or more. Finance Now accounts showed accumulated losses. Hillcrest Litigation Services questioned the truth of this and sent Finance Now an email saying it would pursue its claim to the maximum extent possible, through the Federal Court. Finance Now and Turnbull then claimed the latter is being blackmailed and that the bid to engage him in the case is an abuse of process because the litigation funder is pursuing a settlement disproportionate to the merits of the case. Turnbull said that Hillcrest Litigation Services has threatened to ventilate 'unsubstantiated and baseless allegations of fraudulent conduct', and has sought to inspect emails between Girtler and Hillcrest Litigation Services. However, the federal court judge has ruled that everything of this nature is protected by legal privilege. The judge noted that 'the fight over legal privilege is only one of a lengthening number of disputes in a proceeding now 18 months old'. The next step will be a hearing of Finance Now's application to have the

case thrown out. If it is not, there will be another hearing to determine whether Turnbull is enjoined in the proceeds and then the case will be heard.

I have described the above situation in Matthew Drummond's words and have no other knowledge of the case. From my perspective, he makes only one confusing statement of the kind that many AFR journalists make in almost every paragraph. This mystery is of particular interest because it relates to the concept of the consumer. As I argued in my previous submission to this inquiry, in the dominant conceptual world of the Trade Practices Act there appear to be no consumers, only other traders. Consumers have been added to the TPA later, as a separate section of the act, and as an inconsistent and illogical, legislative response. Related confusion appears in financial journalism. Drummond says:

> 'Using Loanpos' software a person could get finance from a range of lenders to buy a car or a boat within 18seconds.'

From the above statement, one wonders who the person is that is expected to use the Loanpos software. Presumably it is not the same person as the one who wishes to buy a car or boat, and yet Drummond makes it sound as if it is. I assume that the person using Loanpos software is actually a paid worker in a business organization, who is related in some way to one or more organizations with large amounts of money to lend, which are also willing to make some kind of commitment, however minor, to lending it within 18 seconds. I guess that the software described as 'a point of sale credit application system that would provide instant finance approval from a range of lenders within 18 seconds' is not very technically complex or different from software used in many IT applications. I assume it mainly involves a website and a set of questions the loan applicant must answer and return. The question of which organizations with large amounts of money to lend would be prepared to commit themselves to doing so within 18 seconds and on what grounds, seem far more vital than software for the proposed business. These are financial and political questions, not related to information technology development. In summary, I suspect that Girtler's is essentially simple software and that without the input of rich and politically well connected others, his intellectual, technical, or related business plan is worth very little indeed. It also seems to me that any honest judge of the case could quantify how much (if anything) Girtler lost by looking at Girtler's original product. However, according to Drummond's account, a key issue in the case now seems to be whether Finance Now is making or losing money. I think this is largely irrelevant.

As described by Drummond, the case also raises interesting questions about how all business accounting, public administration and related loan accounting should be done. Such issues were addressed by the Legislative and General Purpose Standing Committee of Senate in its report on Transparency and accountability of Commonwealth public funding and expenditure (2007). Even more spectacular difficulties of accounting which may arise in regard to any substantial business venture were addressed by McLean and Elkind (2004) in 'The Smartest Guys in the Room: The amazing rise and scandalous fall of Enron'. Such accounting issues essentially relate to how money which is loaned on a long term basis should be entered in business accounts which supposedly outline the ongoing health of the organizations engaged in the loan related transactions. Essentially,

major questions in business accounting are, 'Should it be assumed that people who have borrowed money will continue to repay it with interest until the debt is paid in full and how should any assumptions about repayment be recorded over the continuing life of the loan? The kind of approaches to public/private partnerships which I recommend in the attached article 'The Constitutional Past and the New Australian Ideal' reduce such accounting problems as they are based openly on program budgeting, as partially implemented in the Australian public service by Wilenski and his followers (1982; 1986).

**Example 5: My Experiences with Members Equity Bank (The Super Funds Bank)**

I own my place of living in Glebe outright and also owned a flat in Gladesville (which I am currently selling to provide a loan to my daughter to buy her first home). St George Bank originally lent me money to purchase the flat in Gladesville, which I rented out to others. In December 2004 I transferred the loan I had obtained from St George to Members Equity Bank because the rate of interest was lower, I was a members of the National Tertiary Education Union and had my superannuation in a UniSuper account (and also in State Superannuation). I thought transferring my loan would be a relatively simple, inexpensive procedure for which I should not need a lawyer. How wrong I was.

I took out a loan of $100,000 with Members Equity Bank and sought to close all dealings with St George. Changing banks involved a re-evaluation of the Gladesville property, and the Members Equity Bank lawyers also sent cheques to the Office of State Revenue (OSR) and the Land Titles Office even though the OSR was not entitled to any money as a result of this transaction. On my ringing Galilee and Associates, the lawyers for Members Equity Bank, to ask a question about the paper work, a very rude lawyer told me to get my own lawyer and that I could not personally be present at the exchange of loan contracts, from St George to Members Equity Bank. From my perspective, I should not have been in an adversarial relationship with Member Equity Bank, as a portion of my wages as a Sydney University lecturer were going into UniSuper and I had plenty of superannuation in my account to demonstrate my credit worthiness in regard to the $100,000 that I sought to borrow from Members Equity. I also owned two properties. Did one really require another valuation? I felt I was driven in a foolishly adversarial and costly fashion, especially since many banks were seeking to lend money on TV every day to people with far less obvious credit worthiness than I. Members Equity advertised itself as 'The Super Funds Bank'. My Super Funds, my Bank! I had thought, naively.

On 9.6.05, (after three previously unsuccessful letters to the OSR,) a very helpful man, Mr David Fraser, rang me from the Collections Branch. He explained that to get $341 back from the OSR, which had been transmitted on my behalf by Galilee lawyers when I changed my St George loan to a Members Equity loan, I would have to send the OSR:

1. The ORIGINAL, stamped, refinanced mortgage to Members Equity
2. A copy of the St George Bank mortgage with the stamp duty paid
3. A copy of the loan agreement with Members Equity
4. Completion of the OSR form (Application for Exemption from Mortgage Duty: Refinancing of Loans).

Believe it or not, the law required the original sending of the money to the OSR, which later could be recouped. I said goodbye to $341 in disgust. I decided it would be far less trouble and more satisfying to write to relevant politicians to complain instead, starting with Dr Andrew Refshauge, who was then the Deputy Premier, Treasurer and Minister for State Development. I argued that in general I should not need a lawyer for a transaction which ought to be far simpler than it was and that I should not be treated as being in an adversarial relationship to MembersEquity Bank. I also argued that it should be my right to personally attend transactions concerning my affairs, and that sending money to the OSR unnecessarily is highly inefficient and its reclamation is unnecessarily costly. (At the time I overlooked that the lender was apparently Perpetual and not Members Equity.)

In February 2007, in order to sell my Gladesville property, I needed to release the property at Gladesville as the security on my Members Equity loan, (which I had reduced to $65,000) and substitute the property at Glebe instead. This time, I noted that the lender was Perpetual, not Members Equity, and wondered why. From my perspective, nobody gave me a sensible answer. As a result of this property substitution I paid the following:

1. Perpetual Ltd. $50.00 (by bank cheque only)
2. Taylor and Scott (lawyers for Members Equity) $150.00
3. Department of Lands. $79.00
4. Office of State Revenue $10.00

The Members Equity contact had indicated that the substitution would cost $200. (Should I have refused to pay more?) In the substitution process, another valuation was made of my property at Glebe. I did not hire a lawyer for the property substitution but corresponded with Taylor and Scott, the Members Equity solicitors, myself. The final letter of 8.2.07 from Taylor and Scott states that in exchange for the above payments the following documents are enclosed:

Certificate of Title Folio Identifier 18/SP14429
Discharge of Mortgage No. AB261447

The letter also states that I must lodge the Discharge of Mortgage form for registration, together with the Certificate of Title, at the Land and Property Information NSW Office. The LPI would then issue me on the spot with a new title deed noting the removal of the Mortgage. (Since I had engaged a lawyer in the interim for the sale of my Gladesville property, I have left the last bit of this transaction up to him.)

In general, I regard myself as having undertaken transactions which should have been extremely simple and largely free of cost, but which were made ridiculously complex and accompanied by large amounts of complex reading matter. I recommend that the Treasurers and Shadow Treasurers invite Australia's leading industry superannuation funds and Members Equity Bank to design a better system from the perspective of the consumer and the national interest. This system serves lawyers and financial interests.

**Example 6: The Uniform Consumer Credit Code**

As a result of reading the Productivity Commission paper on the Consumer Policy Framework (2007) I came to know about the Uniform Consumer Credit Code and tried to get a copy. This was not easy. If one googles the term one goes to a fraudulent website. It discusses a code which is not available on the site or elsewhere. State fair trading departments and the Australian Consumers Association do not have the code on their websites. The person who emails or rings fair trading departments will innocently be referred to the original fraudulent website, where the code is not delivered. Eventually I got hold of it. Under such circumstances I wonder who the Consumer Code is supposed to be for. I assume the answer is lawyers. I make the following points about the code.

The code refers to credit provided or intended 'wholly or predominantly for personal, domestic or household purposes'. (S.6, page12). It is not clear to me whether the code refers to people who wish to borrow money related to their purchase of a house. It seems important that similarly clear systems should apply to housing and to borrowing for other purposes. Is borrowing for housing purchase covered by the Consumer Credit Code? The Consumer Credit Code discusses mortgages. However, it does not discuss certificates of title. Why does the Consumer Credit Code appear to ignore them? In my experience they are one of many irritating steps in the costly, dysfunctional, loan process.

Under the title 'Prohibited Monetary Obligations (Division 2 S.21, p. 21) The Uniform Consumer Credit Code says that a credit contract must not impose a monetary liability on the debtor –

(a) in respect of a credit fee or charge prohibited by this Code; or
(b) in respect of an amount of a fee or charge exceeding the amount that may be charged consistently with this Code; or
(c) in respect of an interest charge under the contract exceeding the amount that may be charged consistently with this Code.

In Division 4, entitled Fees and Charges and under S. 29 entitled Prohibited credit fees or charges it is also stated that regulations may specify credit fees or charges or classes of credit fees or charges that are prohibited for the purposes of the code. However, nothing appears to be prohibited under the Code. Does one have to go to court to find out what is prohibited? Division 6 is entitled Certain Transactions not to be Treated as Contracts. In general, one wonders how a mortgage should relate to a certificate of title and to the concept of a contract in a total legal environment which relies upon interpretations rather than dictionary definitions and in which everything appears to present a lawyers breakfast.

I remind you that in my earlier submission to this inquiry I argued that the current consumer framework is unsound and that more comprehensive changes are required. Accordingly I recommended that:

**In the light of a coordinated examination of state Fair Trading Acts and the Trade Practices Act, a new act entitled the National Competition and Consumer Act should**

**be established, and the Trade Practices Act and any related, outdated legislation should accordingly be gutted and repealed.**

**The new Competition and Consumer Act should have sensible objects and key definitions (rather than interpretations), and be in plain English. The object of the Competition Policy Reform Act (1995), as also introduced into the Trade Practices Act, remain appropriate in this context. Both acts state that:**

> **The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.**

**The new, principal act should then be supported by suitable regulations and codes of practice. The Trade Practices Act and any related, outdated, legislation should then be repealed. State Fair Trading Acts, which currently appear to have no objects, should be reviewed, in a manner consistent with this approach.**

I also remind you that the precedent for the above approach occurred during the 1980s when all states passed new, comprehensive, plain English, occupational health and safety (OHS) acts which have clear and sensible objects and related duties of care. The states then revised and consolidated all earlier and outdated legislation related to workplace health and safety in supporting, plain English regulations. Then they repealed the earlier, outdated Factories, Shops and Industries acts, Construction Safety Acts and related prescriptive legislation. State governments also encouraged expertly developed codes of practice, to assist employers, workers and suppliers to workplaces to achieve their principle duty of care, which is the provision of a safe place of work. Ideally, all engaged in work should have a legislated duty of care to protect workers, consumers, communities and the environment. The provision of a duty of care provides a logical, clear and simple legislative framework for the effective management of risk. In my view, OHS acts provide a suitable management model for dealing with consumer protection. The beneficial effects of competition are best sought and understood in the context of a prior understanding of specific industries and their aims and problems, rather than in the current application of the outdated, prescriptive and nevertheless growing provisions of the Trade Practices Act (TPA) by the Australian Competition and Consumer Commission (ACCC).

**Example 7: Australian Workplace Agreements (AWA) at Sydney University:**

From my perspective, the maintenance of institutional privacy (secrecy) is synonymous with the inevitability of ignorance for others, which is why I object to Sydney University's apparently automatic confidentiality requirements. These have become more visible with the introduction of AWAs at Sydney University. AWAs mandate secrecy for all 'trade secrets, institutional knowhow, plans, strategies and initiatives' of the university. This level of secrecy is very much against the institutional, education consumer and public interest. It also conflicts with freedom of information and with freedom of speech, which the Vice Chancellor claims to see as crucial for university operation (Australian Financial Review 14.1.05, p.29). I think freedom of speech should

normally be conceptualized as related to a general duty to pursue the truth, as distinct from professional and personal advantage. (From a scientific perspective, the adversarial legal system appears corrupt and corrupting.) As a former lecturer at Sydney University, I took up an AWA in 2006 in the hope that I would be able to pursue teaching in a more open manner than appeared possible under the self-interested collegiate controls enforced on all in the Faculty of Health Sciences, where I worked. For ten years I argued it would be in the education consumer, organizational and national interest for me to provide my education content as broadly, openly and cheaply, as possible. However, signing an AWA made no difference to the hindrances to my doing so. In 2007 I retired unsatisfied.

Sydney University apparently believes market opportunities for distance education are best met through closed, expensive, on-line ventures. However, universities taking part in this approach have found that on-line learning production costs are higher than those of the traditional classroom and the ventures have not been commercially successful (Marginson, 2004). In his submission to an earlier higher education review, Bruce Chapman (2001) calculated that it takes the average male thirty-one years to pay off an Australian higher education debt of $100,000 and that after 38 years the average female has paid off a higher education debt of only $60,000. The current closed shop approach to higher education is narrowly elitist and socially dysfunctional, from my perspective. A broader, cheaper and more flexible educational approach is discussed in the attachments. Open undergraduate education should be freely available, to generate broader interest and expertise in development, research and research training. Certification is a separate but related issue. The current commercial, government and collegiate research interests currently drive conflicting incentives. They should be harmonized through partnerships designed to meet regional health and sustainable development goals.

**Example 8: Problems related to the definition of a trading or financial corporation**

In connection with AWAs, the Australian Industrial Relations Commission website states that Work Choices legislation is mainly based on the **corporations power** of the Australian Constitution. As such, the new system is designed for employers known as **constitutional corporations**. To be a constitutional corporation a business entity must be either:

- a body incorporated under the Corporations Law that may be classified as either a **trading** or **financial** corporation;
- a foreign corporation;
- a body corporate that is incorporated in a territory; or
- a body that is prescribed as a body corporate under legislation and is engaged in trading or financial activities.

According to the Commission, it is the activities of the business entity that will determine whether it falls within the definition of a **trading** or **financial** corporation. In the light of the problems in the Trade Practices Act which I discuss in the attached article, and given the comparatively recent accumulation and investment of superannuation funds, the concepts of trading and financial corporations appear in need of review. Australia appears to face the same question that the British economist, JM Keynes, asked of Britain in 1939 when he said:

> The question is whether we are prepared to move out of the 19th century laissez-faire state into an era of liberal socialism, by which I mean a system whereby we can act as an organised community for common purposes and to promote economic and social justice, whilst respecting and protecting the individual – his freedom of choice, his faith, his mind and its expression, his enterprise and his property'.

(Cited in Moggridge, DE. (1992) Maynard Keynes: An Economic Biography, London: Routledge, p.468). Keynes loathing of lawyers and their prescientific approach is a recurring theme in his letters, along with his despair at the government incapacity to deliver better economic management before we all are dead. A more scientific approach to all dispute resolution should be an early priority. This requires broad community education.

**Example 9: The Potential Fate of Comcare**

The current situation of Comcare, the Commonwealth public service workers compensation scheme, may also be considered in the context of the industry management approach I have previously recommended to promote health and sustainable development. The editorial, 'Federal powers can cut both ways' (AFR 22.3.07) stated that Comcare and state workers compensation schemes should compete over premiums and benefits and redouble their weak efforts to offer a nationally harmonious scheme to national employers. The logic of this position involves trying to drive premiums down by cutting injury prevention services and rehabilitation benefits, which also undermines the fundamental purpose of the scheme. The recommended direction thereby promotes an attempted return to application of the 19th century principles of the common law, which US and Australian experience shows has uncontrollable but expensive results. The court process provides no data for effective premium setting, which also undermines good management of all work and welfare systems generally. No thanks. As any kind of consumer, I'd rather have Comcare administration privatized, with the premium funds absorbed under national industry and government ownership. All related workers compensation schemes should then be managed broadly and competitively, in order to identify their comparative performance outcomes, in relation to injury prevention, rehabilitation and fund investment, on an industry basis. Then premiums can be reduced by handling risks and injuries better, rather than by passing their cost on to innocent bystanders, through a process which sends insurers to the wall, while promoting business cost and instability, mainly by enriching lawyers. The editorial writer should study Australian history. I bet he is a lawyer.

## THE CONSTITUTIONAL PAST AND THE NEW AUSTRALIAN IDEAL

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

### Continuing Problems of the Australian Constitution

Australian governments support the new international governance paradigm discussed later. From this perspective, good governance normally requires clear separation of government policy from its administration, with the former driving competitive, transparent, service provision (Rich, 1989; Hilmer, 1993) so all may identify a range of economic, social and environment related performance outcomes. Program budgeting, as partially implemented in the public service by Wilenski (1982; 1986), is central to this approach. Managers start with program or project aims which have been consultatively developed, then establish strategies to meet them and prepare a related budget. All activities are monitored and their outcomes are measured in the light of the general aims. Unfortunately, the Senate Committee report of inquiry into transparency and accountability of Commonwealth public funding and expenditure (2007) ignores program budgeting. It recommends complex additions to the existing budget process which are likely to add to current budget opacity and all related cost. The committee concludes its recommendations are designed to restore the Parliament's historical and constitutional prerogatives. This is undesirable in an era where open partnerships with industry and communities are required to achieve national and regional goals related to health and sustainable development effectively, through fair and efficient competition. The Senate committee seeks to take Australia backwards because it is blinded by an outdated Constitution and financial administration which reflect a British governance model in which elected politicians, administrators, and the judiciary are seen as separate, independent governance pillars. Broader, more up to date, flexible and cheaper education is vitally necessary to bring about community understanding and related change. Closed Institute of Public Administration of Australia (IPAA) and higher education management subjects do not meet Australian or international sustainable development goals effectively. New, open education models for public sector, community and industry management are vital for the future. This is the supporting case.

Before federation in 1901, six Australian states were self-governing colonies each with a Constitution through a British act. The desire to have uniform rules and free trade throughout Australia was the key reason for federation. However, its form has meant complex over-regulation, general lack of transparency and many other costs, including a dominant, prescientific, legal culture. The reader of the Constitution finds clear rules about how Australia should be governed. One sees why they seemed a good idea at the time. Nevertheless, the Constitution is a law about administration, with Commonwealth and state policies subject to it. This inhibits and deforms future law and policy making. State parliaments can pass laws on a wider range of matters than the Commonwealth, but

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

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

Neither the Australian Constitution nor other law has any equivalent to the Bill of Rights in the earlier US Constitution, which prevents a legislature passing laws that infringe certain basic freedoms, supposedly given to individuals by God. The Constitutional form of Australian government supposedly represents 'the sovereignty of the Australian people' and superficially appears to be agnostic. Section 114 states that the Commonwealth must not impose any religious observance or prevent the free exercise of any religion and no religious test should be required for entry to any office or public trust. However, the Constitution actually appears to stand for a Supra-natural Power, which takes a prescientific approach to all development. How else can the supreme authority of

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

**The New International Governance Directions**

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

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

means for implementation of their principles. These may be seen as a state guarantee of national minimum standards of wellbeing for all, albeit delivered in highly varying economic and cultural environments. From this perspective, the provision of justice is like the provision of other services, such as those for health or education. It should be administered in a consultative fashion, guided by clear, broad aims and related programs.

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

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

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

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

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

The United Kingdom, Canada and New Zealand have enacted human rights legislation, but Australia has not, except in the ACT. Australian governments have stated that recognition of individual rights is ideally balanced by recognition of responsibilities. The concept of an Australian 'Bill of Rights' is also highly problematic in the international legal context and broader educational approaches are preferable. Varying cultural environments produce highly conflicting ideas about how to achieve the freedom of the individual from state interference on the one hand, and the stated right to community protection and to equal treatment on the other. In the US, for example, the Constitution protects and so encourages gun ownership, but voting in elections is voluntary. Australians are usually banned from owning guns but must vote. These are differences in moral outlook which suggest implementation of legalistic approaches to human rights are likely to breed major anomalies and costs. On the other hand, all can agree that community and environment health involves diverse life flourishing, and set up broadly scientific methods to achieve it, as long as they are taught some basic principles first.

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

**Hindrances to Australian New Governance, Competition and Consumer Principles**

Australian acceptance of the new international governance paradigm was clearly signalled in 1990 when the Council of Australian Governments (COAG) agreed anew to implement a single, national regulatory environment. This was immediately after the states had begun an examination of all legislation to update it and make requirements plain. The COAG passed legislation requiring mutual recognition of all Commonwealth and State laws and continuing review of legislation, in order to develop national

standards for health and environment protection, including related occupations and training, disability services, social security benefits and labour market programs (Premiers and Chief Ministers, 1991). Competition was to be designed upon this national platform of standards, with the aim of equal treatment for the private and the public sector service provider, unless another course of action appears to be in the public interest. Against this logic, freedom of information principles have so far been applied only to the public sector. Perfect information appears vital for perfect competition, as it does for perfect democracy and risk control, but is widely resisted. For example, the purchaser of higher education has little way of knowing what it consists of until the subject has been paid for. More open education would be better for many reasons.

In 1993, the report to Heads of Government by an independent committee of inquiry into a national competition policy, defined competition as, 'striving or potential striving of two or more persons or organizations against one another for the same or related objects'(The Hilmer Report, 1993, p.2). The earlier Trade Practices Act (TPA) 'interpretation' of competition currently states that, 'competition includes competition from imported goods or from services rendered by persons not resident or not carrying on business in Australia'. The TPA does not define key terms, but 'interprets' them instead. People wondering what a 'covenant' or 'debenture' is may find themselves no wiser after reading the TPA 'interpretation', than before. Dictionaries would be better guides for everybody and reduce legal and related cost. Hilmer wrote:

> Competition policy is not about the pursuit of competition per se. Rather it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives. These accommodations are reflected in the content and breadth of application of pro-competitive policies, as well as the sanctioning of anti-competitive arrangements on public benefit grounds (1993, p. xvi).

This is recognition that the role of government is to intervene in the market in order to facilitate more effective competition or to attain other social objectives considered to be in the public interest. Hilmer stated that the Commonwealth, State and Territory governments had earlier agreed on the need to develop a national competition policy which would give effect to the principles below:

> (a) No participant in the market should be able to engage in anti-competitive conduct against the public interest
>
> (b) As far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of the form of business ownership
>
> © Conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for

review to demonstrate the nature and incidence of the public costs and benefits claimed

(d) Any changes in the coverage or nature of competition policy should be consistent with, and support, the general thrust of reforms:

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

All these steps seem wrong in the light of the Hilmer Report. This indicated that the early Australian legislative approach to competition followed the US Sherman Antitrust Act of 1890 which stated that all 'unfair' business 'monopolizations' and 'combinations' are against the national interest. As JK Galbraith pointed out later, 'To suppose that there are grounds for antitrust prosecution whenever three, four or half a dozen firms dominate a market is to suppose that the very fabric of American capitalism is illegal'(1952, p.68). He also pointed out that this has never discouraged the briefless lawyer. The TPA has developed on a similar basis of early legal assumptions about the market being composed of traders whose interactions, when ideally free from government interference or other monopoly, naturally benefit the whole society. This is a highly questionable economic proposition, unsuitable for legal reification. Neither are consumers recognized as a subset of traders in such a theoretical framework. The comparatively recent concept of the 'consumer' suggests that many traders may need special protection because of their comparative lack of information about what they are purchasing, or for other reasons such as their comparative lack of money, opportunity or related bargaining power. After the Hilmer report, consumers were specifically addressed in a new section of the TPA. This and state fair trading acts now have long, inconsistent, narrow and forgettable definitions of a consumer. The national, uniform Consumer Credit Code (2006) does not define one, but seems generally clear. (The code is hard to obtain. The website does not provide it in spite of its promising title. This is not encouraging.)

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

pursuing, as a result of the form of implementation of the Hilmer Report. The inquiry concluded there is an inherent difficulty in defining anti-competitive conduct in an objective sense and it is not possible to undertake a full benefit cost analysis of the merits of anti-competitive conduct regulation. It stated lack of transparency in the TPA also limits the ability of telecommunications providers and the community to analyse and comment. The PC's attitude to its own inquiry into allegations of unfair use of market power in telecommunications is summed up in its quote from the Hilmer Report:

> The central conundrum in addressing the problem of misuse of market power is that the problem is not well defined or apparently amenable to clear definition…. …….Even if particular types of conduct can be named, it does not seem possible to define them, or the circumstances in which they should be treated as objectionable, with any great precision……Faced with this problem……..the challenge is to provide a system which can distinguish between desirable and undesirable activity while providing an acceptable level of business certainty. (PC, 2001, p. 154)

This is also the justification for the planned, government, industry and community approach to competition proposed in this article. The problems of an overcrowded market were faced in NSW in 1987 when the WorkCover Scheme was introduced after the collapse of five out of over forty insurance companies underwriting workers' compensation and competing on premium price. Government and industry paid for this failure. Under the WorkCover Scheme, government and industry own the premium fund and set rehabilitation benefits and premium levels. Twelve insurance companies are licensed to manage the scheme competitively, with oversight by the WorkCover board. Insurers compete primarily on their ability to assist injury prevention, rehabilitation and fund investment, rather than premium price cutting. This structure promotes general economic stability as well as cost containment. The premium fund is retained in industry and government ownership, not given away. This seems a sensible injury prevention and rehabilitation model for future industry and community developments to reduce risks to the natural environment as well as to workers, consumers or communities. Education and research are ideally designed to meet needs identified through evidence and consultation.

The above approach to controlling work related risks to health is consistent with UN and International Labour Organization conventions and also with the WHO and Australian approach to health promotion. As Duckett (1997) pointed out in regard to community heath services, the Medicare monopoly has protected the health of Australians more broadly, equitably and cost-effectively, in comparison with the experience of US consumers of private sector health care. Do economists agree this makes Medicare a natural monopoly? From such perspectives, the government allocation in 2006 of two new digital television services *'for new and innovative digital services rather than replicating traditional television services'* presents welcome opportunities. The best management structures for educational TV and supporting entertainment are worth inquiring into in the light of continuing skill shortages, the current high cost of tertiary education, and the need to promote general understanding of the new international and national management approach, as well as sale of other Australian products and services.

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

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

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

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

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

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

However, the more things change the more they stay the same. The ACCC recently stated that it wants even more legal monopoly powers to fight for competition in communication. State professional registration acts remain one of many problems hindering more transparent and effective approaches to delivering services, including education, which could be made openly and widely available on TV and by computer. Related systems for competency certification are a separate, vital issue to be considered.

**Conclusion and an Educational Way Forward**

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

In the emerging, international, governance paradigm, the government role is ideally to assist fair, effective and efficient achievement of industry and community health and sustainable development goals, through partnerships with communities and business. In this context, independent and accountable decisions are ideally guaranteed through the mechanisms of broad community education and broadly informed decision making, open to scrutiny and debate. The Constitution, centralised budget administration and related trade rules currently prevent this, in spite of the earlier direction established by Hilmer and Heads of Government. A logical place to begin to rectify the above problems is the Institute of Public Administration of Australia (IPAA). As an IPAA member I have therefore applied to IPAA officers at the NSW Premiers Department with a view to putting the community and industry management subjects I used to teach at Sydney University on an open website. I did this after John Della Bosca, the NSW Minister for Education and Industrial Relations, responded positively to my public plea that he support the capture and use of my intellectual property, now that I am retired from academic service. Universities and all other education and training providers should logically be invited to join in the establishment of an open educational approach, by tendering their intellectual property for use. A Learning and Development Committee has been established by the NSW IPAA branch which might undertake the management of this direction in consultation with potential content providers and the Australian Business, Industry and Higher Education Collaboration Council. Education content approval and certification of competence to practice are separate but related issues.

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