[received by email 15/12/08

Dear Sir/Madam

I would like to make the following submissions to the Review of Regulatory Burdens – Social and Economic Infrastructure Services. All discussion is aimed at alleviating the regulatory burden of the sectors by enhancing the consistency or reducing duplication of regulations or the role of regulatory bodies. This is achieved primarily through recommending national standards, more open information and administration procedures and by recommending application of scientific rather than narrowly legal and feudal approaches to understanding, judging and remedying the world. I deal with Information, Media and Telecommunications first. Please see below and attached.

Yours truly
Carol O'Donnell *[address supplied]*

To: Director Editorial Policies, ABC

Please find my response to your review below and related policy directions attached.

Thank you for the opportunity to make this submission.

Yours truly, Carol O'Donnell, *[address supplied]*

REVIEW OF THE ABC SELF-REGULATION FRAMEWORK

A-1 What do you regard as the purpose of self-regulatory standards?

To provide ongoing evidence to the public that the organization provides high quality product and related services.

A- 2 What format and size should the Editorial Policies take?

The clearer the point of them and the shorter they are the better.

A-3 What should the Code of Practice contain, compared with what is contained in the Editorial Policies?

I have no idea. However, I think the SBS Code of Conduct is very good and the ABC should consider the extent to which it ideally co-operates or competes in similarly free and open activities. I have also recommended the SBS code in the attached submission to The Governance of NSW Universities Inquiry as a freeing, opening, broadening and related evidence grounding device. The SBS code contains many statements like:

'SBS leads the exploration of the real, multicultural Australia and our diverse worlds. This means

- We are a pioneering broadcaster, going places that other broadcasters avoid; and
- We reflect real, multicultural Australia – contemporary Australia is multicultural and multilingual; and
- We explore and connect the diverse cultures and perspectives that make-up the worlds that we live in.'

B-1 What are the relevant differences between training ABC staff and training independent service providers?

If they are doing the same jobs for the same provider I assume they need to know the same things whether they are employed by the ABC or someone else. Is this not so?

B-2 How can corporate-wide consistency be ensured where this is necessary or desirable? How can diversity be preserved, where that is necessary or desirable?

By a few clear standards and directions, openness of content and processes, and the development of open complaints handling processes which provide good data to improve products and services further. Teach all through their disagreement and avoid any self-censorship you do not consider to be in the public interest. Self-censorship occurs when organizations are incapable of clearly justifying what they do and so are afraid to meet criticism of it. This tendency promotes narrow, dysfunctional, cultural and academic silos which are nevertheless endlessly concerned with how to justify their status through endlessly questioning others, rather than opening up their product for all to judge.

B-3 What are the likely future training needs of the ABC in a converging media environment:

There will be a need for:

- better organized educational and related entertainment product planning, production and dissemination systems
- supporting media content retrieval, acquisition and usage systems
- supporting complaints classification and handling systems so better coordinated education and entertainment delivery are possible across Australia.

Learn from those who currently lead the world in this development direction. God knows who that is. I would ask Google, State Libraries or the Australian Bureau of Statistics.

Handling complaints

The potential for the open study of complaints and their handling is generally important for achieving broader education for democracy and for related organizational improvement and self defence against any sectional or popularly driven narrowing of the ABC desire to serve all through its content. I guess SBS probably has a lot of experience of how to face such problems and wonder if they follow any relevant international standards. Since I do not work at the ABC I have no idea of the range of comments and complaints made to the organization or the responses usually made in reply. However, from the ABC website I note that complaints made

by email rose from 20,381 to 45,584 per annum in just a few years. One does not want to spend one's life responding to complaints. On the other hand, complaints ideally provide a vital method of policing and promoting the quality (accuracy, honesty?) of the organizational product and also promoting debate about social and organizational direction. If the organization does not have exceptionally well thought out complaints classification, treatment and related data gathering systems, workers who are criticized by anybody will get into an increasingly anxious muddle and will strongly self censor. (I have seen this at Sydney University.)

There is no such thing as unbiased decision making, to the extent that every individual has a mind and views which are the product of their own specific environment and its interpretation. 'My story matters – as they all say on SBS'. If one is ideally concerned about determining what is true in order also to act fairly, the more relevant information one has about a matter the better, including about one's own personal and organizational production. The reception of any shocking view or apparent reality, which some would prefer to be hidden, is something the teacher or the scientist ideally confronts, examines and judges as honestly and fairly as possible, when complaints arise from any comparatively objective or subjective quarter. The concept of balance instead suggests a legal arena with only two protagonists and the judge being right in the middle. This is not an effective way of reaching truth. The latter is a scientific concept which must be historically grounded in broader views of reality and evidence about the world than that which is introduced via two adversaries, battling according to ancient and/or narrow rule books applied by their related lawyers, who thereby increasingly produce 'junk science'.

A common legal principle is also that ignorant decision making may be equated with being unbiased and therefore moral. For example, Garnaut's report on climate change warned:

> Care would need to be given to the design of the institutional arrangements for administering the allocation and use of permits. Variation in the number of permits on issue or the price would have huge implications for the distribution of income, and so could be expected to be the subject of pressure on Government. There is a strong case for establishing an independent authority to issue and to monitor the use of permits, with powers to investigate and respond to non-compliance '(2007, p.65).

Such views appear irresponsible because government is elected to govern and by giving away its power to a body established at arm's length from itself, it can only make itself more ignorant and unaccountable than it would otherwise have been. The idea that establishing fund management bodies at arms length from an original body will guarantee objective management is particularly misguided if the appointed trustees have secret relationships and drivers of their own. From the lawyer's perspective, which values all ignorance very highly, inside trader is naturally criminal. Logically, this either ignores or demonizes the natural intimacies of the marriage bed and all other friendly relationships. Surely we all want to help our family and friends? The only problem is that some of us are more equal than others and having a good old college and alma mater helps us even more. The lawyers' direction, driven by well-placed endowments, is more likely to reach perfect ignorance than perfect information, as the financial crisis indicates. It also costs the earth.

Ideally, one should think of the media as related to the Australian body politic, and treat it accordingly, because it has a huge influence on society. Some of us, including me, get nearly all of our current information about our surroundings from the media. It had better be good. Debating the nature of the information product is central to democracy and complaints against the ABC are ideally very valuable model data in this context. Complaints need to be dealt with sensibly in the light of ABC goals, but also need to be as effectively understood and as well presented for others' perusal as possible, to improve standards of complaints handling, related questioning and education, and also to promote more open broadcasting everywhere. Good parents follow this general policy in family disputes. When siblings fight, a parent does not suggest each child goes off to find a lawyer to maximise their case secretly in order to have it presented according to a variety of rules about how to fight. A parent tries to understand each side fully, sympathetically and fairly. The English common law system, which Australia inherited from feudal times, is based on a more adversarial and punitive model of human relations than the family model. It later allied itself to the commercial market and determined the central trajectory of modern science - kill your enemies, cure your family and sell more new products produced in secret. Finding the perfect product requires perfect information. Mandated secrecy, the lawyer's central tool, leads eventually to perfect ignorance through increasing complexity which is primarily designed and driven to create awe, confusion and dependency in the uninitiated. Eventually the blind may lead the blind.

Although the current information on the ABC website seems relevant, clear and interesting, I think the nature of comments, complaints, disputes, their treatment and evaluation, needs to be given the same kind of broadband classification attention that doctors have given to the diagnosis of complaints brought to their attention by sick individuals. Does the ABC do this? When products and their direction are both open, each person can judge better to teach themselves. The organization can also be more easily defended or admit it was wrong. Your questions on complaints handling do not seem to me to be ones that can possibly be answered by the average friend of the ABC, such as me. I would have thought it is a job for inside experts – do librarians perform this kind of knowledge classification? Are there international standards related to the classification of complaints and dispute handling which are relevant for the ABC? There ought to be, because democracy and the communications revolution are very young and need informed direction. Your questions reminded me of a common problem of academia, which is that the collegiate cultures need better organized management overview and knowledge development. All are currently driven by narrower cultural understandings and perspectives. Our comments are necessary, but we do not have the broader systematic knowledge and expertise that answering your queries requires.

During the European Enlightenment, just as dictionaries were recognised as a classificatory invention necessary for the consistently repeated practice of science and all related improvement of the human condition, so in 2008 the diagnosis and classification of complaints about the media should ideally assist the public to have confidence in its communication product and related services. This in turn will allow the communications media to play an increasingly useful role in educating and entertaining the communities it serves. Law courts operate on pre-scientific principles, so lawyers have not been able to grasp the concept of the common

dictionary or laws with aims. It has therefore not occurred to them to adopt any effective dispute classification and related data gathering systems either, to help society, if only by reducing its legal costs. Lawyers have comparatively little reason to care what customers think of their services or to worry about its outcomes. Theirs is the most powerful occupational monopoly in the country and their status is largely determined by the views of peers or their largest clients, which rarely justify themselves to any outside court. This is like a licence to print money?

The ABC and SBC will perhaps have to take the lead in complaints handling and related data management if anything useful is going to happen in this area, let alone quickly. Lawyers are not equipped to do it. Would the Bureau of Crime Research and Statistics and existing mediation services also provide useful advice about complaint classification and handling which is also relevant to the ABC? I assume the process begins with the broad establishment of the strategic, organizational and risk management context in which this action will occur. The next step is to identify and analyze the range of complaints and related risks in order to assess, priorities and treat them. The final step is to monitor and review performance (AS/NZS 4360 – 1999). As far as I am aware this simple risk management approach was first contained under state OHS acts in the 1980s but can be used anywhere to establish quality management in the interests of product or service producers, customers, workers and their related communities. Unfortunately I cannot apply it as I am outside the ABC and have little idea of the complaints against it.

In the diagnostically related risk management context outlined above, I attach an article I wrote entitled ‘A healthier approach to justice and environment development in Australian communities and beyond’, which was published in ‘Public Administration Today’ the journal of the Institute of Public Affairs of Australia. It argues that health and related environment development are at the centre of a new international governance paradigm which also raises risk management to new importance. Implementation of this paradigm requires broad administrative reform in Australia and beyond to meet the evidentiary requirements of scientific and quality management. The Alternative Dispute Resolution (ADR) practitioner’s qualifications for the role should primarily reflect the knowledge requirements of the general community and the stakeholders in the environment most relevant to resolution of the question in dispute. For example, construction appears likely to be the best training ground for all ADR practitioners working in the construction industry, but good analytical, verbal and written communication ability is a vital part of the role as well as industry and related technical knowledge. If this is so, then industry and community key stakeholders should identify, train and/or approve a range of ADR practitioners who may or may not have other relevant qualifications. Such issues require further consideration in a range of industry and related organizational contexts, including that of the ABC and SBS. I attach recent submissions on regional development to the Productivity Commission to assist this.

DEPARTMENT OF BROADBAND, COMMUNICATIONS AND THE DIGITAL ECONOMY PAPER: 'ABC AND SBS: TOWARDS A DIGITAL FUTURE'

Reply from Carol O'Donnell, *[address supplied]*

Questions: Harnessing new technologies to deliver services (p.13)

What is appropriate role of national broadcaster? A. To educate, entertain and encourage further communication and sustainable development.

Can archives be more effectively used and accessed? Yes. Decide your education development direction and ask the Prime Minister (PM), other ministers and premiers for help with the related agenda for sustainable and fair development which is justified briefly below. The direction is developed in the attached discussions of carbon pollution reduction, healthy development and financial management in Australia and beyond.

Is there a role for the national broadcasters to be early adopters? Yes. On clearly justified environmental, social or related economic development grounds.

Questions: Education, skills and productivity (p. 26)

Will there be a role for extended national broadcasting in education and training and particularly in the vocational education and training environment? Yes! You may start with the development of greenhouse gas audit and related green education and employment development strategies, with health and related environment development strategies – or with different development strategies that you like better, such as language and cultural teaching through entertainment. See attached directions and proceed as you consider best. (I would personally like to see Marx, Freud and Dylan recognized as the great modern Jewish prophets of the world's historical materialist and related democratic development traditions. Their legacies shine strongly through much high quality US entertainment culture but have been lost from much US professional discourse, which is collegiate, faux-scientific and ultimately feudal, like the US financial system it drives.)

Questions: Social inclusion and cultural diversity (p. 31)

Are there ways of enhancing the value of the national broadcasters' services to migrant groups? Yes - by assisting skills development and education for sustainable development strategies to meet identified and prioritized industry and related community need. (See attached discussion. Mining, construction and agriculture are three of many related areas of concern.)

Questions: Presenting Australia to the world (p. 36)

Should consideration be given to expanding or enhancing services with other countries? Yes! Inform the Premiers the Prime Minister and relevant Ministers that

you would like to begin developments, if possible, with the Open University at Milton-Keynes in England, with appropriate production sources in China, (which has the second most common language of the world), and with those anywhere else deemed relevant. Ask for their advice and assistance. (See attached related policy discussion and direction.)

Questions: Efficient delivery of services (p. 41)

Is there an optimal mix of in-house and outsourced production? No. However, there is always a great need to access and develop a wider range of talent on one hand, and to empower the powerless on the other. Though their use of technology is terrific, many Australian films would be much better if more attention was given to script, in my view. When people actually know what they are talking about it really shows! That is what makes the Black Balloon, the Final Winter and the film about the singing Chinese mother so good, in my view. Give me words and genuine cultural understanding over technology any time. The range of talent is currently too narrow. Sony Tropfest is a fabulous opportunity which deserves to be developed, rather than captured. I guess it's teetering on the edge of domination by industry based mateship. (Underbelly was terrific, obviously.)

TAKE THE OPEN UNIVERSITY APPROACH. ADDRESS THE HEALTHY ENVIRONMENT, WORK AND RELATED FINANCIAL NEEDS OF INDUSTRIAL AND REGIONAL COMMUNITIES. LEAD IN CO-OPERATION WITH INTERESTED OTHERS.

The internet, computers, TV, radio and videos provide the most amazing potential for fast and effective skills development and related education since books escaped monasteries. The 20th century technologies mean a massive reduction in the need for constantly re-inventing the wheel, as is normally done by teachers talking in classrooms which are often far away, and to which students drag themselves, often at exorbitant cost and inconveniently. Ideally, all teaching staff and students could co-ordinate through Australian communications and technology services to develop a better grounding for work in industries or for service in any community but especially those which are poorest.

Part of the answer to developing a globally innovative and competitive Australia also lies in analysing and meeting the education and entertainment needs of Australians and others together. The service and productivity gains which could be derived from more effectively coordinated education, related communication and information technology management systems would be great. Yet there is huge resistance to better management from many collegiate teaching cultures. They are dysfunctional for all. They do not want to be effectively Green, Global and Connected. Act to break their feudal fiefdoms.

In general, academic and other teachers appear to support the combination of narrowly regulated professional requirements and skill shortages, which reflect and support their industrial interests, regardless of the wider impact of this on industry and international society as a whole. Such teachers normally appear to do all within their power to design the student educational experience in the interests of their particular teaching body, to protect the level of status and control of those currently teaching. If one felt

this was also done to protect the standard of services their particular brand of students will deliver to the public one would not mind so much. However, if teachers are so concerned about professional standards, why do they resist their curriculum being open, so that it can be judged by anyone? One is not forced to buy a car unseen, on the basis of ratings provided by groups of self-interested car makers. One should be able to see the curriculum product so as to judge it, whether or not one decides to buy the process of teaching support and assessment which leads to certification. ABC and SBS should lead more open education.

From the historical perspective of the normal product development chain and from the related democratic perspective which seeks to meet the broadest possible need for high quality and rapid skills and education development, the Australian online education production process appears to be totally and determinedly irrational. (One person, the teacher, does almost everything herself, but her work can only reach a comparatively few people.) One may wonder why the apparently normal way of providing the most effective production and related economies of scale have apparently been ignored in regard to on-line teaching. I guess that the big US money behind IT development is strong enough to drive everything else in its own interests, and that these dominating interests have allied themselves with universities and technical colleges against the broader public interest, for related development purposes. On the other hand, the powers of Google, email, TV, radio and videos in providing information are enormous and the Sony Tropfest approach to the image has wonderful democratic development potential.

I have normally found that students who hate writing and teachers who hate constantly replying to individual students' questions and marking individuals' voluminous projects, often agree strongly about the desirability of multiple-choice exams and the related utility of tick the box questionnaires. Students are also less likely to feel that they can argue with a numerical score than with others' opinions, which is relaxing for all involved. (It's the number, stupid?) I think such pressure for numerical scores often create bad education, with little teacher and student feedback along the way. Students are instead encouraged to become rote learners, who may think that numbers and objectivity are identical. They may also avoid any broader learning and application of knowledge and related critical analysis in potentially useful ways to help regional or related workplace communities, while they gain the certificates which supposedly prove their proficiency. What good is education without a related demonstration by the student of the facility to critically analyse information, apply the results of gathered knowledge and express the outcome of having apparently gained it? The essence of scientific development is the capacity for evidence based activity. An Open University approach is recommended.

An Open University (OU) meeting I attended in Milton Keynes in England (29.5.08) first stressed the importance of QUALITY, ACCESS and SCALE in OU curriculum production and dissemination. The reason for the establishment of the OU is to make higher education available to many more people. All registered OU students have access to a tutor – local or online. I assume that all education provision should also aim to be in line with the Australian government commitment to AFFORDABLE, ACCESSIBLE, HIGH QUALITY and GREENER services. I have argued for many years, (using some of the current best evidence about on-line learning difficulties in Australia) that it is impossible to meet the above education service goals without an

OU-style open model of education curriculum and delivery rather than closed, collegiate, discipline driven and related silo based production of education materials. Who know what they are doing?

The OU usually requires no entry qualifications for undergraduates studying for degrees or at lower certificate levels and regards student exit levels as more important than entry levels. This approach seems completely reasonable. One often meets people with comparatively little formal education, who nevertheless appear extremely clever, either in some particular area of expertise, or generally. If such people at last are given the opportunity to shine through being able to gain relevant certificates of qualification for higher activity, society will benefit. However, the approach of welcoming all to learning means that considerable thought must also be given to the aims of any subject, the curriculum content necessary to support the aims, as well as the assessments given to students who want to demonstrate their attainment of the requisite knowledge, in order to apply it. Ideally, the comparative quality of the students' test outcomes should be judged as consistently as possible by all those most concerned. We all need be able to see and comment on teacher and student product for best results.

I think that subject aims, the education content to meet those aims, and the assessment related requirements for knowledge attainment and certification of proficiency in practice, are the primary issues that should concern a teacher. Otherwise, she may appear to be a law unto herself, who operates with insufficient justification for what she decides to teach and for its related certification. This has been a recognized problem in university research. For example, the elite Group of 8 Universities Response to the Expert Advisory Group's Preferred Model paper for the Research Quality Framework (RQF 2005) identified the need for a clear statement of research purpose in relation to application of the RQF. The first two points of the Group of 8 proposed purpose for the RQF were:

1. To provide governments and business with the additional information they need to assess the value of their investments in research
2. To provide researchers and institutions with the additional information they need to plan future research strategies.

Students and potential students, as well as the above stakeholders would benefit from the provision of freely available UG or related content which meets the identified needs of industry and regional communities better. This could provide baseline information upon which training for research might normally be expected to develop.

The Sydney University Business Liaison Office currently appears obsessed with patents as the only legitimate form of commercialisation**.** The organization seems to have gone backwards since 2002 when Kevin Croft offered a definition of commercialisation as:

> 'Maximising the process of transferring outcomes to the community in a manner which optimises the chances of their successful implementation, encourages their use, accelerates their introduction and shares the benefits among the contributing parties'

He offered this to the Medical Foundation and the College of Health Sciences Conference in Leura. It has no contractual or legislative backing but seems good to me.

A RESPONSE TO THE PRODUCTIVITY COMMISSION DRAFT OF THE INQUIRY INTO GOVERNMENT DROUGHT REPORT

INTRODUCTION AND RECOMMENDATIONS

The draft of the Inquiry into Government Drought Report is another excellent Productivity Commission (PC) product and I think all its recommendations should be supported. However, its focus does too little to prepare Australia for a greener future and for related carbon trading and offset investment schemes to achieve it. The major goals of this submission, therefore, are carbon pollution reduction and protecting biodiversity.
It primarily addresses PC draft report recommendations 7.1 and 8.1 so as to position Australia's farming and related communities more effectively in their regional, social and environmental contexts, so all production can be managed in a more holistic and therefore more effectively coordinated manner, to achieve all stakeholders' social and environmental goals more competitively. This submission also aims to position Australia to achieve all related national and international goals more effectively, through managed and targeted competition and evaluation of the outcomes, according to triple bottom line accounting requirements, which are economic, social and environmental. Farming, mining, waste management, communication development, education and research are addressed in a related fashion. This also addresses the third of the Terms of Reference given to the PC, which was to identify the most appropriate, effective and efficient responses by government to build self reliance and preparedness to manage drought.

PC draft recommendation 7.1 states:

The objectives of the Australia's Farming Future initiative should be revised and expanded to the following:

1. Assist primary producers to adapt and adjust to the impacts of climate variability and climate change

2. *Encourage primary producers to adopt self-reliant approaches to managing risks*(My italics. Risks to the surrounding environment must also be managed.)

3. Ensure that farm families in hardship have temporary access to a modified version of income support that recognises the special circumstances of farmers

Draft recommendation 8.1 states that 'Significant public funding should be directed to research, development and extension to assist farmers prepare for, manage and recover from the impacts of climate variability and change. However, primary producers ideally also manage risks that their production may generate for others besides themselves and this needs to be clearly recognized for effective development. Encouraging primary producers to take self-reliant approaches to managing only their own business risks is a good idea unless the practice becomes so successful that it threatens the sustainability of competing life which is ideally valued more highly, in

order to encourage other industries, such as eco-tourism, communication or education, and in order to ensure the preservation of vulnerable species and the quality of life for future generations. For example, I love to see orang utans on TV as well as in the wild and hope they are valued more as I get older, rather than dying to produce palm oil. Government policy can assist many such market transitions so that they maximise the interests of communities in meeting all regional, national and international goals as widely, effectively and competitively as possible. Later discussion addresses this. Some draws verbatim on the findings of my daughter, Jessica O'Donnell, who completed a study at Macquarie University, entitled 'How vulnerable to climate change are plant communities within protected areas' supported by the Department of Climate Change. The following recommendations are made:

1. Plan agriculture, mining and eco-tourism in their regional land matrix contexts nationally and internationally to achieve all the goals of sustainable development.
2. Consider carbon trading and offset development in the context of the land matrix regionally, nationally and internationally to address global warming and loss of diversity.
3. Act to reduce carbon pollution and protect biodiversity by weed and pest removal, planting native vegetation and protecting river banks.
4. Seek more innovative, better coordinated management of urban and rural waste, pursued in more open markets
5. Consider the management of life and death to support the aims of the Australian Organ and Tissue Donation and Transplantation Authority Act (2009) and to assist personal choice to be exercised more effectively
6. Intervene in the national broadband communication content planning and service delivery processes to achieve all community goals as scientifically, effectively and competitively as possible

The following attached submissions to inquiries should be read in a related context:

- Health and education for sustainable development and the Australian Carbon Pollution Reduction Scheme
- Submission to Australian Health Ministers Advisory Council on a national registration and accreditation scheme for the health professions

1. PLAN AND PURSUE AGRICULTURE, MINING AND ECO-TOURISM IN THEIR REGIONAL LAND MATRIX CONTEXTS, NATIONALLY AND INTERNATIONALLY TO ACHIEVE ALL THE GOALS OF SUSTAINABLE DEVELOPMENT

2. CONSIDER CARBON TRADING AND OFFSET DEVELOPMENT IN THE CONTEXT OF THE LAND MATRIX REGIONALLY, NATIONALLY AND INTERNATIONALLY TO ADDRESS GLOBAL WARMING AND LOSS OF BIODIVERSITY

3. ACT TO REDUCE CARBON POLLUTION AND PROTECT BIODIVERSITY BY WEED AND PEST REMOVAL, PLANTING MORE NATIVE VEGETATION AND PROTECTING RIVER BANKS

According to the PC (p. 35) Australia is highly urbanised by international standards. In 1906 around 65% of the population lived outside the capital cities, falling to about 36% in the 1970s. This remains the situation. However, between 2001-2006, the capital cities, some coastal regions, provincial centres and mining towns experienced population growth, whereas populations in most rural and remote areas declined. Australian agriculture is ideally planned and managed from within such regional contexts where land is understood and utilised in planned production. In these contexts, one wonders which crops and animal husbandry should be encouraged in a dry continent and which should be discouraged, to achieve the goals of sustainable development most effectively. Mining interests must also be considered in regional contexts where the total land matrix is utilised effectively for planned, competitive development. Waste management and communication to promote education, development and research also require discussion in related regional arenas. This submission calls for universal action based on such analyses. Related carbon trading and offset development also require consideration in the regional context of the land matrix, nationally and internationally. This is discussed later.

The PC profile of Australian agriculture indicates that traditionally it has been dominated by extensive pastoral and cropping activities, including wheat, beef cattle and sheep (for wool and meat products). Over time, the share of wool and wheat in agricultural output has declined while that of beef and sheep meat and other crops has risen. Since 1983, areas under cotton, cane, potatoes, rice and horticulture increased, and viticulture has expanded. Intensive livestock industries have also grown. Cotton and rice production, however, have recently declined relative to the levels attained in 2001-02 (PC, p.18). There has been long term decline in the number of farm businesses, with numbers falling from about 196,000 to 130,000 in 2004-2005. The area of land used for agricultural production has declined and is now at around 1950s levels. In 1996-97 the largest 30% of farms generated 76.5 percent of the total value of agricultural operations, while the smallest 50% generated 9.8% of the total value of agricultural operations (PC, p.20).
Farmers in areas such as western NSW, central Queensland and parts of the east coast are more likely to be vulnerable than farmers in other areas. A lack of partnerships, degradation, small area scale operations, low average incomes and lack of off-farm income were major indicators of vulnerability (PC p.30).

The above indicators ought to be considered in concert to achieve broader community and environment related goals, including carbon reduction and biodiversity maintenance through trading and offset development. For example, one wonders whether cotton and rice are sensible products to grow in such a dry continent as Australia, where the price of water will necessarily rise in future, along with community criticism of the effects of water removal on biodiversity and climate change. In the colonially driven production context described, one also wonders whether it is mainly for European colonial reasons that bamboo, a fast growing plant which can be used in building, for cotton-like clothing and for many other purposes, seems largely to have been ignored by Australian agriculturalists. In a related context one wonders whether the consumption of kangaroo meat should be preferred over the consumption of other meat, for the purposes of general sustainability, or whether kangaroos should be perceived as lucrative tourist draw-cards, which are endangered by culling. In the same colonial context it is important to consider the knowledge of the land which Aborigines who were hunter gatherers have, and more generally to

become more aware of the potential of products traditionally used in Asia and other places rather than Europe.

Those concerned more with conservation than agriculture have suggested that 49 plants and 54 animals have become extinct across Australia, and more than 1000 plants species, 400 animal species, and 40 ecological communities, are currently under threat from many human-induced pressure and the impacts of pest species. Some invasive weeds, other pests and their destruction of native vegetation on which fauna depends, may also be seen as problems by farmers and conservationists alike. Effective management of common threats within the landscape matrix is increasingly recognized as an important element in the development of adaptive management strategies for protected areas, and conservation initiatives in general. In relation to climate change, the management of these threats, and the maintenance of high quality and well connected habitat are necessary to facilitate the dispersal and establishment of species within new areas. I cite O'Donnell's work below.

Approximately 89 million hectares of land, or 11% of the continent is currently protected in some form. Since the 1960's, the development of the national reserve system in Australia has been based on the principles of comprehensiveness, adequateness and representativeness (CAR) (ANZECC & MCFFA 1997). These principles are directly related to the development of the Interim Biogeographic Regionalisation of Australia (IBRA), which divides Australia into 85 distinct biogeographic regions and 403 sub-regions. IBRA provides a scientific framework and tool to aid and evaluate the realization of the CAR principles in the development of the national reserve system. For example, the current goals of the national research system are to protect 80% of the ecosystems represented by both the IBRA regions and sub-regions by 2010-2015 (DEWHA 2008a). In the last decade however, the acquisition of land for the national reserve system has not met current targets (Sattler & Taylor 2008). The treatment of farming and mining in Australia should take account of the impacts of various forms of production on climate change and biodiversity. Government should also consider further acquisition of protected land.

Traditionally, the establishment of protected areas has been thought the most important and effective conservation method. Protected areas offer differing degrees of protection, ranging from formally managed national parks to land subject to conservation covenants, and the World Conservation Union has developed a formal classification system to define these different levels of protection. Ideally, protected areas represent suitable habitat of an adequate size for the maintenance of ecosystem processes and the persistence of species populations, in an environment that is protected against destructive activities and land-uses. The Australian protected area network incorporates over 9000 reserves, including national parks, protected land owned by indigenous Australians, areas managed by non government organizations, and private land protected through conservation based agreements such as Covenants. Should these reserves now be augmented by measures to achieve as many national and international goals as possible? (I guess so, but the decision is ideally made on a variety of good evidence about the regional land matrix.)

The perceived effectiveness of protected areas was initially based on the assumption that species distributions were static. As early as 1985 however, it was recognized that species distributions were changing in response to climate change, and that this would

have implications for the capacity of protected areas to continue to conserve individual species and maintain current community assemblages. The WWF report *Building Natures Safety Net (2008)* assesses the current state of Australia's national reserve system in terms of meeting current targets for ecosystem representation. The report highlights the inevitability of change in the current species assemblages within protected areas, an important issue that had been raised in the Australian *National Biodiversity and Climate Change Action Plan 2004–2007* (NRMC 2004). The Australian Government Department of Climate Change report *Implications of Climate Change for Australia's National Reserve System* builds on this theme by suggesting the previously accepted conservation goal of "preventing ecological change" must shift towards "managing the change to minimize the loss". This new way of thinking incorporates two main management directives: (1) the facilitation of natural changes, such as species distribution changes and community change, and (2) the identification and protection of areas considered especially important as refuges, or particularly vulnerable to climate change. (Why accept losses?)

Recognition that species ranges are shifting, at least partly in response to climate change, has greatly increased consideration of the landscape matrix, in the conservation of biodiversity. The quality of the landscape matrix plays an important role in facilitating or preventing a species dispersal, survival and establishment. The landscape matrix, represents both potential habitat of varying quality and also a source of threats to species survival, persistence and migration. For example, a history of land clearing, intense land use and modification has reduced the extent of natural vegetation on the east coast of Australia. Suitable habitat within the landscape matrix is often highly fragmented, posing barriers for species movement, migration and dispersal, and impeding genetic flow. The modification of hydrological systems, pollution and the introduction of grazing species have further degraded potential habitat in Australia. Disturbance of natural ecosystems, nutrient addition and the activity of grazing animals have facilitated the invasion of exotic plant species, which compete with native plants for resources. It is recognized that synergies exist between these factors and the pressure imposed by climate change, potentially making the combined impact worse than the sum of the impact of individual factors. How are all ideally treated in regional land matrix contexts and more broadly?

Protected areas represent the most common and potentially effective method to conserve biodiversity. They aim to buffer healthy habitat from human activities that modify, degrade or destroy ecological assemblages. For two decades, it has been recognized that climate change poses a threat to the effectiveness of protected areas, and there is mounting evidence that the distribution of species, and species representation within communities is already changing in response to climate. O'Donnell's study sought to assess and compare the vulnerability to climate change of plant assemblages within two Australian national parks in contrasting environments, using three potential indicators of climate change vulnerability. She used bioclimatic modeling to predict the current bioclimatic ranges of all higher plant species known to inhabit each park, and compared the range size frequencies between the parks. To investigate and compare levels of climate change exposure, she projected the current plant ranges onto a future climate scenario and measured the magnitude of range size change, and the potential loss of plant species from each park. To investigate and compare the capacity for plant species to track climate change outside the boundary of the national park, and move between refuges such as protected areas, she undertook a

simple qualitative analysis of the landscape matrix surrounding each park – one inland and one coastal.

The results suggest plant species inhabiting both Kinchega and Myall Lakes national parks are vulnerable to climate change, as all species responded to future climates with shifts in range, and the landscape matrix around each area also presents threats to species persistence and movement. Plant assemblages within Kinchega National Park, however, may be more vulnerable to climate change, as the Kinchega species showed stronger responses to climate change, which is likely to translate into greater ecological change within the park. The flora of the Darling Riverine Plains vegetation is currently not highly represented in the Australian National Reserve System, and species shifting out of Kinchega National Park face a highly degraded landscape, with few areas of formal protection, and high levels of competition from a large number of exotic pest species. The study suggests plant assemblages within Kinchega national park may be more vulnerable to climate change-induced range contractions than those within Myall Lakes National Park, but that both parks will be susceptible to change.

The vulnerability of a species, community or ecosystem to any kind of pressure, or threat, is determined by a multitude of interrelated factors. These factors can be categorized roughly into three main groups: (1) the intrinsic characteristics of species, (2) the factors that determine the degree of exposure to a pressure or threat, and (3) the factors that influence the adaptive capacity of a species. O'Donnell found the landscape matrix around Kinchega national park represents continuous remnant vegetation, but poor quality habitat due to high levels of grazing pressure and competition from a large number of invasive plant and animal species. The lack of protected land within the region reduces the chance of species shifting into land actively managed for conservation purposes, leaving them more vulnerable to a range of threats. The landscape matrix around Myall Lakes is highly fragmented, due to widespread land clearance for agriculture and urban development, which represents the greatest threat to biodiversity within the region. A greater concentration of reserves within the region increases the chance of species shifting into other protected areas, but fragmentation of the landscape is likely to present numerous barriers to dispersal. Climate change and a landscape matrix affected by production and development both reduce biodiversity. The latter appears the main problem. This has implications for land planning and carbon offset development.

The provision of drought support requires consideration in an environment where invasive weed eradication and the planting of native species to provide habitat and build corridors for wildlife migration are ideally also recognised as necessary. This direction is ideally supported by carbon trading and offset development. In this context the concerns of organizations such as Rivers SOS also require close consideration and related action. Rivers SOS is an alliance of 41 community groups in NSW campaigning for a safety zone of at least one kilometre around all rivers in order to protect them from the severe damage being done by poorly regulated mining operations. (Anyone who has visited Borneo might guess that a similar river strategy is urgently necessary for protection of many endangered animals such as orang utans and proboscis monkeys. In some areas there is so much clearing in the forest along supposedly protected rivers that one wonders how long the eco-tourism industry and animals can survive. Rivers are also good for carrying other produce cheaply, even for the smallest operators). In the light of the ageing and more affluent populations which

have arisen comparatively recently across the world, the preservation of native animals and related development assistance provided to their surrounding communities, is ideally a central strategy for all future development. This seems the only sensible way forward, with poverty alleviation considered in this context.

Mining is ideally considered in related regional contexts. For example, Rivers SOS is concerned about longwall coal mining. It claims this underground mining is having a devastating impact upon rivers, swamps and aquifers. The group claims mining and environmental legislation are failing to protect the environment or provide water security and that protection zones are now required to protect rivers, streams, swamps and other key natural features from being cracked, drained and polluted as a result of ground subsidence caused by longwall mining. It calls upon government to implement a regulatory system that counterbalances mining approvals with a legislated one kilometre protection zone for rivers, streams and swamps. Among other measures, it seeks adoption of the recommendation of the Hawkesbury-Nepean River Management Forum which principally sought to ensure that all underground coal mining is required to eliminate existing impacts and to avoid future impacts upon the water supply system, rivers, streams and wetlands within the Hawkesbury-Nepean, Shoalhaven and Woronora catchments. The group also seeks to expose the mining industry to greater public transparency and accountability, by providing greater access to all environmental reporting and standardising the community consultation process. Such concerns are important to take into consideration in any planned approach to the land matrix. Perfect information is necessary for a perfect market. The international financial crisis was based on ignorance instead. The blind led the blind. Freer markets depend upon reliable information.

4. SEEK MORE INNOVATIVE, BETTER COORDINATED MANAGEMENT OF URBAN AND RURAL WASTE, PURSUED IN MORE OPEN MARKETS.

5. CONSIDER THE MANAGEMENT OF LIFE AND DEATH TO SUPPORT THE AIMS OF THE AUSTRALIAN ORGAN AND TISSUE DONATION AND TRANSPLANATION AUTHORITY ACT (2009) AND TO ASSIST PERSONAL CHOICE TO BE EXERCISED MORE EFFECTIVELY

The Lord Mayor of Sydney, Clover Moore, states that the council's Sustainable Sydney 2030 program anticipates there will be restrictive carbon pollution policies in the future and proposes several measures through which the City can reduce its carbon footprint and become more sustainable. A key Sydney 2030 initiative is to change the way energy (electricity, heating and cooling) is provided and distributed. The plan for Green Transformers includes the introduction of locally generated energy using various low-carbon energy generation technologies such as co-generation, tri-generation and renewables. It is recognised that in the long term some of the fuel for this network could be sourced from local waste. In November 2008 the City sought expressions of interest in the provision of light emitting diode (LED) technology to improve lighting in public spaces. This technology apparently has the potential to cut energy use by 50%, decrease maintenance costs and also provide improved lighting conditions in public spaces.

Currently in NSW the state government has a program for recycling and reuse of government waste. Councils handle waste separately. Better coordinated and more

innovative management of waste management programs is necessary in the future. Sustainable Sydney 2030 commits the City to investigating an integrated waste management strategy with other Inner Sydney Councils, which may include establishing an Alternative Waste Technology (AWT) facility as an alternative to the current practice of using landfill for disposal. AWT facilities have the potential to recover 80% or more of recyclable materials and have the potential to generate energy through the capture of methane. This would help the City meet both its waste diversion targets and support the Green Transformers initiative, according to the Lord Mayor.

Proposals for AWT facilities should include investigation and consideration of the current methods of disposal of all human and animal body wastes, in order to improve their treatment. In a medical context, the prevention of overpopulation and the disposal of human bodies and their wastes are the raw material of many potential scientific and democratic revolutions. More scientific and democratic development approaches have yet to emerge from the destructive ignorance of past feudal practices everywhere, which many rich lawyers and others still jealously guard through courts, which also support 'junk science' through their expensive adversarial practices. The Australian Organ and Tissue Donation and Transplantation Authority Act will commence in January 2009. Its aims and related requirements need close examination in this context in order to develop an understanding of how the health aims of everybody may be achieve most effectively and fairly. Ideally, individuals have the right to make their own informed decisions. They should not normally be spoken for by lawyers, psychologists, ethicists and others who may use the pretence of protecting people to frighten them to silence while living off them.

After the Nazi defeat in Europe, the Nuremberg trials produced a Code which expressed the new international awareness that narrowly driven views of scientific experiment may make total destruction as likely as improved wellbeing. The Nuremberg Code 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 should be applied in any broadly scientific approach to individual or community management, as well as in medical experiments. Broader community education rather than lawyer driven requirements and ethics committees are needed in this context. The latter may just produce red tape and often copy feudal assumptions and practices which are pre-scientific, let alone pre-Nuremberg. 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 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.

This route is also necessary for freer international markets and attaining Millennium Development goals. Many poor women have little or no choice whether they carry a child or not. That choice is largely up to men and they too, may have no contraception. Uncontrolled population growth is therefore a major problem for all those seeking to end poverty and to improve health and sustainable development by freer choice. The use of nuclear power remains a key safety concern for every nation, particularly in Iran. The record on Iranian women and children's health, family planning and related education are all comparatively good for a developing nation. Ideally, Australians should try to collaborate further with Iranians or other willing communities to improve child and community health, including through nuclear medicine and environment protection.

Cultural or related legal prohibitions against the death penalty for major criminals must also be understood as occurring in many contexts where the urban or rural poor and disabled are given no government economic support of any kind whatever. From any perspective, but especially from theirs, the jails may appear most accurately conceptualised as comparatively expensive forms of welfare service provision, made primarily to those who appear least deserving. The funds might logically have been spent more usefully elsewhere, including on provision of relevant contraceptive devices to reduce poverty, crime and all related environmental degradation. We need more useful cultural dialogue so that everybody can have their personal wishes satisfied better.

My personal aims in life are to gain greater public recognition of the need for more competitive, greener development everywhere, and to obtain more personal choice for elderly citizens such as myself, so as to render more support to other more vulnerable beings as well. If every Australian over retirement age who wished to do so was given the choice to end their life up to two years earlier than might otherwise be so, the taxpayers could save vast amounts of money on care towards the end of life, when its quality may also be diminished and so valued least by some of us. When we are old enough to rationally assume that we will not get better, some of us may wish that the money which keeps us alive was spent instead on making life more comfortable for many who apparently have much more reason to live than we do ourselves, such as all those who are younger and more vulnerable. From this perspective, which others may share, voluntary organ donation in old age may be conceived as a great form of public service, a related potential gesture of personal gratitude or atonement and a choice ideally made available in the public interest to anybody who is elderly. I aspire to make this choice, albeit preferably at some stage later on. I have always tried to make the most of my body and am deeply grateful for its absolutely outstanding service so far. I would ideally like to help others live, including monkeys and other endangered species, by donating it later.
Surely I have the right to this choice, which is so obviously in the public interest.

6. INTERVENE IN THE NATIONAL BROADBAND COMMUNICATION CONTENT PLANNING AND SERVICE DELIVERY PROCESSES TO ACHIEVE ALL COMMUNITY GOALS AS SCIENTIFICALLY, EFFECTIVELY AND COMPETITIVELY AS POSSIBLE

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. Achieving Millennium Development and related goals also requires healthier, freer trade. Ideally, regional environments are examined to identify and manage key risks to business, community and environment wellbeing. In this national context, where perfect markets also require perfect information, the broadest and most open communication possible appears logically to be the best way forward to the freest markets. I therefore assume that talks about how to achieve this should start with Telstra and with all related others, including ABC and SBS TV, other TV stations, newspapers, Microsoft, Google, Sony, libraries, museums, universities, other education, training and research institutions, etc.

In November 2008, Senator Conroy, Minister for broadband communications and the digital economy called for bids to deliver a national broadband network which meets the government objective of providing a fibre-based network reaching 98% of the Australian population and delivering minimum speeds of 12 megabits per second, according to the Australian Financial Review (AFR 1.12.08, p.3). Telstra has proposed a national broadband rollout but made clear that it is likely to be able to deliver coverage for only 90% of the population. It argues the $4.7 billion the government has put towards the project will only allow such limited reach (p.3). It also indicates a willingness to take the government offering of $4.7 billion as a 'concessional' loan rather than a grant. (AFR 27.11.08, p.64). Including Telstra, the government has received six proposals – four national and two for states. Three national broadband bidders have claimed they will meet the criteria to reach 98% of the population but some propose doing so by connecting more remote areas with wireless technology, not fixed fibre network (AFR 1.12.08, p.3).

Boss magazine(AFR Nov. 2008, p.26) states Sol Trujillo became Chief Executive Officer (CEO) of Telstra in July 2005. There are currently 47,000 employees. The Chairman, Don McGauchi, claims he is 'totally supportive of Sol positioning the company to give 'shareholders and customers first priority. Not anyone else who may think they have a stake' (p. 29). One wonders, however, why the CEO has such an enormous remuneration package as that reported in the media. On what basis does Sol Trujillo get so much money and what is he expected to do for it? Are no others capable of doing his job as well but cheaper? If so that is remarkable. What makes him so special? Is he uncompetitive?

The Telstra Chairman has submitted a scoping proposal as distinct from a bid to the government. He said Telstra cannot bid without an assurance it would not have its business structurally separated by government delivery requirements and described other areas of concern that need to be resolved. Key Telstra concerns are 'for its intellectual property to remain confidential and for clarification of the regulatory

regime'(AFR 27.11.08, p.64). The latter appears also to relate to other uncertainties over how to treat any supposed 'conflict of interest' which may arise a result of the history of Australian government ownership and regulation of Telstra.

The concept of being or doing actions which are labelled uncompetitive is a legal mine field, which may also be linked to the concept of having a conflict of interest. In an earlier inquiry, the PC estimated that Telstra currently accounts for around two thirds of total services revenue in the communications industry. Its market dominance is due to the fact that it is the original government owner and provider of all the lines and switches that are currently used for sending or receiving voice and data on fixed phone lines. If a rival to Telstra wishes to compete in non-local services, such as mobile, national and international long distance calls, it must have access to the 'local loop' of aging copper wires historically funded by government and inherited by Telstra. The latter has faced repeated charges from the National Competition Council that it prevents competition to its services through its monopoly power. The Australian Competition and Consumer Commission (ACCC) conduct arbitrations. Telstra has been called the biggest consumer of legal services in Australia (PC, 2001, p. xxv). (How much does this cost taxpayers?)

The current government may be forced to wait until the second half of 2009 to sign any contracts for broadband rollout because the opposition insists on a full inquiry into the project (AFR 26.11.08, p. 14). They question the use of government money to subsidise networks in city areas that could get services on commercial terms. They also oppose the government taking equity or debt in the network operator as this would 'revive the conflict of interest prevailing when the government owned and regulated Telstra' (p.14). The legal concept of 'conflict of interest' and its treatment is often based, however, on outdated assumptions. One is that competition to get money is the only kind which need ever be addressed. A second is that the more market players offering services in any arena, the better the society will be served. (Anybody who knows anything about the comparative provision of health care internationally knows this assumption is nonsense.) Thirdly, this view of competition, which focuses on trading, takes no account at all of the importance to the consumer of any particular kind of media content over any other. (Lawyers are nuts.)

The form of national competition policy envisaged by Hilmer (1993) would have led naturally to triple bottom line accounting – economic, social and environmental - if implemented properly. He defined competition as, 'striving or potential striving of two or more persons or organizations against one another for the same or related objects'(1993, p.2). His recommendations were agreed to by governments but botched in implementation to the Trade Practice Act (TPA) which recognises competition for money as the only kind. Hilmer's national competition policy ideally requires private sector and public sector service providers to compete on a national level playing field of standards which ideally apply equally to all competing operations. Separation of national policy from supporting service management ideally allows the outcomes of all competing service managers to be judged. Whether the latter are government or privately funded organizations is not important. The vital question is how comparatively effectively their management achieves the mission or standards which have been agreed more broadly. The role of government is ideally to intervene transparently in the market to facilitate more effective competition or to attain other social objectives considered to be in the public interest.

From the above perspective there superficially seems to be no need for Telstra to be broken up, as long as its goals are clearly aligned with those of government and its operations are transparent enough for its comparative outcomes to be judged effectively on a continuing basis. Telstra ideally competes with peer producers on a level playing field, whether it built an earlier version of the latter playing field itself, or not. In its inquiry, the PC (2001) 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 that lack of transparency in the Trade Practices Act (Part XIB) also limits the ability of telecommunications providers and the community to analyse and comment. The Commission's view of its own inquiry into allegations of unfair use of market power is summed up in its quote from the Hilmer Report (1993, p. 69):

> 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. (2001, p. 154)

Unlike the ACCC and the PC report above, I also assume the choices which people make about communication are driven at least as much by the media content produced for the competing communications available, as by the cost of their carriage. For example, whether I watch TV, get a video, use my computer, listen to the radio, read a book or go out to a lecture or the theatre on any particular evening depends overwhelmingly on my level of interest in the competing content on offer, and also whether it is close to home. Within reason, the cost of the communication carriage is normally less important than the content of the product. (For example, I always go out of my way to avoid sport. Others may see it as one of life's top priorities. History and politics are similar, in reverse.) In communication choices, one's taste is everything. On the other hand, the high cost mandated for traditional university education, where the curriculum is closed and the lecture time or place may be very inconvenient, seems unnecessary and outrageously unfair. Universities appear to function for accreditation of narrowly self-appointed elites.

Close consideration of the potential consumer choice of specific communication content appears vital for effective broadband planning and service delivery purposes. The objects of the Radiocommunications Act (1992) should have focused many recent inquiries much more effectively on educational and entertainment content than was the case. Lawyers and those who benefit from their feudal mode of production often love acting to increase their costs and are powerful enough to force their feudal will against any later, more scientific approaches. How else may one explain the failure to implement the Hilmer Report better, even though its contents were supported by government? Why ignore the Radiocommunications Act, which seeks management of the radiofrequency spectrum to:

- Maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum
- make adequate provision of the spectrum for use by agencies involved in the defence or national security of Australia, law enforcement, the provision of emergency services, or for use by other public or community services

A government appointed panel has the authority to consider Telstra's twelve page submission as a bid, alongside those of other bidders and will report within eight weeks from the end of November 08. In my view the government committee and all broadband bidders should confer as necessary, with the aim of maximising their service outcomes and the related interests for all involved. Presumably their activities will also be considered under the public-private sector plan for infrastructure funding described by Finance Minister, Lindsay Tanner in an article entitled 'Tanner puts trust in time to be fair'. (AFR, 19.11.08, p.4). This indicates that the government intends to use some of the money from its three infrastructure funds to buy shares in companies responsible for nation building projects, thus giving it oversight of the ventures it sponsors to ensure accountability. The reform of rules of government investment in national infrastructure is also designed to attract some of the billions of dollars invested by Australian superannuation funds in offshore projects (p.4). Broadband development is part of infrastructure development.

The government's announcement of an 'education revolution' in late 2007, aimed to provide each school child with access to a personal computer, the 'tool-box of the future'. The PM also discussed his vision to 'unleash the national imagination from beyond the ranks of politics and the public service' and 'to help fashion a national consensus around a common vision for the nation, with common goals to aim for within that vision', in the Sydney Morning Herald (SMH 17.4.08, p.11). The national broadband direction is ideally addressed in a clearly related context of industry, community and environment planning and development. The Australian Broadcasting Commission (ABC) outlined its plans for five channels. ABC5 will be the Educational Channel providing English and foreign language tuition, curriculum material and an integral digital resource for a newly developed national schools curriculum, with at least 50 percent Australian content to meet teachers' and students' needs. Coordinated consideration and attainment of open education and related entertainment media content is vitally necessary, so learning on the job and away from it is easier for everybody.

From the historical perspective of the normal product development chain and from the related democratic perspective which seeks to meet the broadest possible need for high quality and rapid skills and education development, the Australian online education production process appears to be totally and determinedly irrational. (One person, the teacher, does almost everything herself, but her work can only reach a comparatively few people.) One may wonder why the apparently normal way of providing the most effective production and related economies of scale has apparently been ignored in regard to on-line teaching. I guess that the big US money behind IT development is strong enough to drive everything else in its own interests, and that these dominating interests have allied themselves with universities and technical colleges against the broader public interest, for related development purposes. On the other hand, the powers of Google, email, TV, radio and videos in providing information are enormous and the Sony Tropfest approach to the image has wonderful democratic development potential.

Community benefits can be derived across all boards if industry leaders, their organizations and members participate in broader, more open, regional community planning approaches which address innovative management and skills developments to achieve the diverse goals of sustainable development as broadly as possible. The carbon pollution reduction scheme provides potential support for this direction. An industry and community approach to management and all related education ideally starts with teaching key skills and management principles for the identification, prioritization and control of community and environment risks, in order to devise effective injury prevention and rehabilitation solutions for the future. Open and broader educational support is needed for this approach. Sol Trujillo apparently has introduced a $200 million program called the Telstra Learning Academy to improve training and better equip the field force of 'techs' who go out in the trucks and do the legwork. He is quoted as saying he values customers and shareholders first and they should be put at the centre of everything. He thinks there is no such thing as too much feedback. Open discussion to gain jointly agreed broadband contract design and service operation seems the logical approach.

Thank you for the opportunity to make this submission.
Yours truly, Carol O'Donnell, *[address supplied]*

A HEALTHIER APPROACH TO JUSTICE AND ENVIRONMENT DEVELOPMENT IN AUSTRALIAN COMMUNITIES AND BEYOND

Abstract

This article shows that health and related environment development are at the centre of a new international governance paradigm which also raises risk management to new importance. Implementation of this paradigm requires broad administrative reform in Australia and beyond to meet the evidentiary requirements of scientific and quality management. Recommendations for the development of alternative dispute resolution systems (ADR) are made in this context. Supporting education and research into the comparative role and effectiveness of ADR and courts are also required.

Changing international and Australian perspectives on governance

The first principle of the United Nations Rio Declaration on Environment adopted in 1992 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 agreed to create an Asia-Pacific free trade zone by 2020, and supported protection of health and the natural environment. APEC members have diverse political regimes including those of Australia, China, Japan, Indonesia and the US. Governments based on the British model have traditionally separated three principle governance powers, as in the Australian Constitution. Elected politicians, government administrators, and the judiciary are central and independent governance pillars in this model (Commonwealth of Australia 1995). In a more recent governance model, the emphasis is primarily on the necessity for clear separation of policy and administration, with the former driving competitive, transparent, service provision (Rich 1989; Hilmer 1993; Osborne and Gaebler 1993) to achieve health and sustainable development. In this management model, prosecution and dispute resolution are conceptualised as services which should provide data to assist injury prevention, rehabilitation and the future direction of sustainable development. Open, broad accountability is seen as the best guarantee of independent action in the public interest.

This emerging view regarding the appropriate roles of government and the market has developed as governments, including in Australia, have adopted the World Health Organization (WHO) holistic perspective on health as a state of complete physical, mental and social wellbeing, and not merely the absence of disease or infirmity. This requires much broader and better-coordinated management approaches than the earlier, medical model, which focused on treating an ailing body. In 1981, Australia committed to implementation of WHO health promotion goals in which consultation and equitable access to health were also agreed as fundamental community rights. In 1983 the Commonwealth government introduced the Medicare system of nationally guaranteed, taxpayer funded health care. In 1986, national health promotion plans were established on the basis of identification of the major causes of death and hospitalisation and the establishment of strategies for controlling related risks. (Department of Community Services and Health 1994).

Australian state occupational health and safety (OHS) acts were also introduced during the 1980s to replace earlier, prescriptive approaches in which law often had no clear objects, but was supposed to be followed to the letter. Under state OHS acts all employers are now required to provide safe places of work as far as reasonably practicable. Employees must work safely, and sellers to the workplace are expected to provide safe products. Employers are required to undertake risk identification and control in consultation with workers who are provided with information and training (Industry Commission 1995). In NSW, which has a third of the Australian population, the WorkCover Authority administers the OHS act and the workers compensation act. WorkCover inspectors, trade union representatives and others may be approved to undertake workplace investigations and prosecutions. The insurance fund is administered by twelve insurers which collect premium, administer claims and undertake data gathering and fund investment on behalf of government and industry, which owns and therefore underwrites the fund. This structure seeks to meet the need for effective, data driven management in support of injury prevention, rehabilitation and economic stability (Industry Commission 1994).

In 1986, the WHO Ottawa Charter stated that supports for health include peace, shelter, food, income, a sustainable economic system, sustainable resources, social justice and equity. Australian governments and industries are working on this kind of broad and better-coordinated management approach to promoting health and sustainable development. In 1990 the Australian Council of Australian Governments (COAG) began review of legislation 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). In 1995, following the Hilmer Report, the Competition Policy Reform Act was passed. This requires government and private sector service providers to compete on equal terms, unless another course of action appears to be in the public interest (Fels 1996). Professor Hilmer has now become Vice Chancellor at the University of NSW.

In 1994 the UN defined community-based rehabilitation as:

> A strategy within community development for the rehabilitation (CBR), equalization of opportunities and social integration of all people with disabilities. CBR is implemented through the combined efforts of disabled people themselves, their families and communities, and the appropriate health, education, vocational and social services (UN Social Development Division 2001: 1).

In 2000, Australia began a coordinated health and disability management process with the development of regional health plans based on population profiles, including socio-economic indicators and a focus on the needs of the aged (NSW Health 2000). This is the national health service context in which all related service provision, including for crime prevention may now be conceptualised. Australian governments recognize that reducing the supply of motivated offenders requires reduction in the general level of community stress. In NSW, coordinated place management, community housing and crime prevention strategies are being implemented to achieve this (Standing Committee on Law and Justice 1998 2002).

Strang and Braithwaite (2001) have argued that the way the legal system punishes apparent breaches of the law seldom leads to outcomes that aid rehabilitation of offenders and is more likely to result in social exclusion and development of subcultures beyond the reach of moral education. They and others have called for restorative justice approaches to conflict between individuals or within communities. The UN has defined restorative justice as any process in which victims, offenders and other stakeholders participate actively in the resolution of matters arising from crime, often with the help of a fair and impartial third party. The recent NSW Young Offenders Act seeks to facilitate a less adversarial, community based approach to justice by providing for an integrated, hierarchical scheme of police warnings, cautions and youth justice conferences designed to divert offenders from formal court processes for certain offences. Circle sentencing is also being introduced in Aboriginal communities. Suitably coordinated management approaches ought, apparently, to be designed to assist prevention of injury to workers, consumers, community members and their natural environments. However, current cultural assumptions about justice and the related design and practices of courts frustrate the achievement of data driven management to achieve community health and sustainable development.

Central concepts related to the legal idea of justice

A recent federal civil justice system strategy paper (Attorney General's Dept. 2003) stated many people speak of 'justice' as being about what in their view is fair – what is 'right' as distinct from what is 'wrong'. When the public speak of 'access to justice' they usually proceed from the conception of the legal system as a service provider, addressing their particular grievance, vindicating their rights and achieving their desired outcomes. However, access to justice can only ever mean relatively equitable access to the legal process. The concept of the divine authority of the monarch appears to live on in the modern Australian state, in subordination to its Constitution, which all must follow. As Chief Justice Griffith noted:

> 'judicial power' as used in sec. 71 of the Constitution means the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property.' (Attorney General's Dept. 2003: 150)

This appears to entail a prescientific cultural assumption that the attainment of a social purpose higher than self interest (justice) can be equated with an institution (the court) which supposedly delivers it automatically, by subordinating all scientifically derived evidence to an adversarial process ultimately driven by the word of a supreme authority.

According to Popper (1972), science aims to be objectively grounded in the outcomes of experiment and test. Although honesty is not a scientific concept, all science depends upon it. Honesty is similarly related to the concept of truth. However, recent papers on the review of the Uniform Evidence Acts (Australian Government/Australian Law Reform Commission (AG/ ALRC2004 and AG/ALRC 2005) discuss the unfamiliar concept of 'probative value' instead. This means something akin to 'likelihood of truth'. However the meaning is unclear. This

appears to be partly because the pursuit of client interest is defined as the paramount legal aim, which is normally carried out according to the particular letter of the particular law and according to particular rules of evidence. In comparison, any scientific search for truth must take a backseat. Privilege is also a central legal concept used to justify the denial of information, which is considered to outweigh the alternative benefit of having all information available to facilitate the trial process. The central assumption of the legal profession, apparently, is that the lawyer should rightfully conceal or mould what his client knows is true, in order to maximise his interest in revenge or escape from any guilty judgment and its results.

The search for truth is therefore not the primary object of legal practice. This is contrary to the expectations of any scientific or problem solving approach, including scientific or quality management approaches to provision of health related care which are discussed later. One issues paper indicates that some judges have supported the privilege against self-incrimination as exercisable on the grounds of 'human rights which protect personal freedom, privacy and human dignity' (AG/ALRC 2004, 174) and the extension of such privileges to defactos, as well as spouses, is now being recommended. From a later, scientific perspective, the concept of human rights must be essentially linked to the concept of the truth about real world conditions, if anyone is to find justice. The representative of the Law Council of Australia stated that:

> In considering evidential (sic.) rules a fundamental distinction needs to be drawn between civil and criminal proceedings. Whilst civil process is ultimately concerned to provide a forum for the settlement of disputation between citizens, criminal process involves accusations by the state against citizens for the purpose of punishment (AG/ALRC 2005: 61).

Within democracies, and from a scientific perspective, much statute law is now ideally seen as the required community standard, consultatively made by elected representatives, which all relevant citizens are expected to uphold. For example, state OHS acts are examples of civil laws which describe the generally expected standards and related practices for health and safety at work. In spite of championing legal predictability, Australian lawyers appear unable to accept any scientific approach to evidence which might treat civil and criminal jurisdictions more consistently in order to improve injury prevention and rehabilitation across the board, through more effective risk management and related treatment. How firmly are they bound by their profession or related law?

Some shortcomings of the legal paradigm

Between 1973 and 1989, ten inquiries concluded that the adversarial court system is detrimental to rehabilitation of injured workers (NSW WorkCover Review Committee 1989). There were five insurance company insolvencies in the mid eighties in NSW, when over forty insurance companies were underwriting workers' compensation. Competition on premium price led to pricing wars and to insurer reserves running low at a time when courts were making increasing lump sum payments (NSW Government 1986). This led NSW and other state governments to introduce the current managed fund structure. Many Australian inquiries have gathered evidence that the traditional court process hinders rehabilitation, injury prevention and supporting service management. This is partly because courts and related institutions do not keep any appropriate data to assist injury prevention, rehabilitation, cost

containment or general economic stability. (National Committee of Inquiry 1974; NSW Government 1986; NSW WorkCover Review Committee 1989; House of Representatives Standing Committee on Transport, Communications and Infrastructure 1992; Review of Professional Indemnity Arrangements for Health Care Professionals 1995; Standing Committee on Law and Justice 1997; Heads of Workers Compensation Authorities, 1997; Industry Commission 1997; Grellman 1997; Senate Economic References Committee 2002; The HIH Royal Commission 2003).

For example, the Senate Review of Public Liability and Professional Indemnity Insurance (2002) noted that absence of a national aggregated database of health care litigation claims made it impossible to identify where the real risks are, whether they are changing and which size claims are increasing most. It found litigation may be driven by legal advertising and no win no fee arrangements. Costs were also increased by lack of penalties for pursuing unmeritorious claims and the expectation that the insurer will settle on the assumption that courts will take a sympathetic attitude towards a victim. Insurers estimated that legal costs in personal injury cases amounted to 40% to 50% of the total costs. But nobody had any reliable data. The committee concluded that the court system provides economic incentives to litigate, without providing supports for effective rehabilitation or future management.

The National Expert Advisory Group on Safety and Quality in Australian Health Care (1999) advised health ministers to support national actions for safety and quality related to strengthening the consumer voice and learning from incidents, adverse events and complaints. From this perspective, dispute resolution should logically be managed as a service, like health or education provision, which aims to improve community health and related social or environmental outcomes. Risk management may be defined as a way of achieving continuous improvement in production and its outcomes. It is a logical and systematic method of identifying, analysis, treating, monitoring and communicating risks associated with any activity, function or process in a way which will enable organizations to minimise losses and maximise opportunities. It begins with the establishment of the strategic, organisational and risk management context in which action will occur. The next step is to identify and analyse risks in order to assess, prioritise and treat them. The final step is to monitor and review performance (AS/NZS 4360 – 1999).

Australian standards and codes of practice support state OHS legislation and assist risk management. People are expected to apply relevant codes at work unless the evidence is that another course of action is preferable for health reasons in the specific situation under consideration. This approach provides the legislative context for a generally more independent and informed approach to work, which can be compared with the scientific, evidence based approach, required of health workers. For example, a health worker is ideally expected to identify a client's problem and to apply treatment after consultation and consideration of the relevant body of scientific evidence or related expert protocols. However, the treatment may vary as far as this appears to be necessary to meet the specific health needs of a specific individual or situation. The reasons for any deviation from the generally expected expert practice should be documented (Johnson 1997). Ideally, all such information can contributes to research aimed at improving the overall outcomes for particular communities and

individuals, in the light of the study of a broad range of specifically grouped environments, concerns, treatments and outcomes.

Lawyers usually bill for work on the basis of how many hours it supposedly took to do. However, there is little or no systematic information in the latest Senate report on legal aid, or in earlier major reports on access to justice, about the social problems which are dealt with by the courts. This lack of comparative information about types of dispute, their treatment, and their outcomes is typical of legal practice and can be unfavourably compared with the situation in health care. The health practitioner gathers evidence of apparent problems, records a diagnosis and implements a recommended treatment. Ideally this is applied with variations the practitioner considers necessary in the light of relevant evidence about the particular case or situation. The Legal Fees Review Panel (2004) discussed task-based legal billing favourably. This is defined as reporting the cost of legal services by tasks, using billable codes to describe them. Ideally, the lawyer provides a budget in advance of performing work and may not exceed the budget without prior agreement. This form of billing appears to be more consistent with Medicare expectations and with the Casemix (diagnostically related group) funding model that ideally plays a vital part of the identification of quality and value in health service provision. Duckett (1997) found the Australian Medicare system outperformed U.S. private health care performance on service access, equity and cost, but not quality. He later called for a more effectively integrated and data driven approach to be taken to all community services (Duckett 2004).

Define ADR in context and identify related stakeholder relationships appropriately

The hypothesis is that all communities need non-adversarial dispute resolution methods aimed primarily at harm prevention, with punishment and rehabilitation conceptualised in this context. After consultation, the National Alternative Dispute Resolution Advisory Council (NADRAC 2004) advised the Commonwealth Attorney General to review potential models for a national mediator accreditation system. It defined ADR as a process, other than judicial determination, in which an impartial person (an ADR practitioner) assists those in dispute to resolve the issues between them. It called ADR processes facilitative, advisory, determinative or, in some cases, a combination of all three. Mediation was defined as facilitative, because the practitioner assists the parties to identify the disputed issues, develop options, consider alternatives and try to reach an agreement about some issues or the whole dispute. Conciliation was called an advisory process in which the conciliator is a neutral third party who considers and appraises the dispute. Expert assistance may be sought in regard to apparent facts of the dispute, the law, possible or desirable outcomes and how these may be achieved. Arbitration, expert determination and private judging are provided as examples of determinative ADR processes (NADRAC 2001).

Mediation, conciliation and arbitration may be seen as ascending steps in an approved practitioner's degree of power to judge matters and people, on the basis of all apparently relevant evidence gathered about the major issues of concern to the key stakeholders and others. However, distinctions between mediation, conciliation and arbitration are not consistently made in Australian legislation. In the court, on the

other hand, opposing lawyers drive the collection and consideration of all evidence about a matter strictly, according to fixed legal and adversarial principles, presided over by a comparatively passive judge. This is normally expected to occur in isolation from knowledge of earlier or related attempts at conflict resolution, thereby wasting time and money. The court appears to equate such comparative ignorance with lack of bias, which may seem strange to some.

In order to develop effective ADR training or accreditation, the key stakeholders in the most clearly relevant communities must be consulted first. Their members enter into dispute, and therefore are those most likely to be prepared to pay for any supporting process of dispute resolution, related training or accreditation. ADR practitioners may be broadly conceptualised as those who the key stakeholders in a relevant industry or community environment entrust to undertake an informed and effective search for evidence, in order to resolve disputes and record outcomes, so as to prevent environmental problems, of which future disputes may be symptomatic. In ADR, a range of independent advisors or umpires may be approved to assist the parties in dispute. They may gather evidence or advise on expert assistance to determine the answer to a problem from a perspective which is broadly consultative, evidence-based and appropriately balanced, in the light of all relevant legislation and related conditions in a specific situation. Many people, including government health, safety and environmental inspectors may currently act in similar, arbitration-style roles, as well as taking prosecutions. The legitimacy of judgments seems likely to be strengthened when those judging are empowered by more immediate communities, as well as by government, which may be seen by some as remote or threatening to the individual interest.

From the above perspective, the ADR practitioner's qualifications for the role should primarily reflect the knowledge requirements of the general community and the stakeholders in the environment most relevant to resolution of the question in dispute. For example, construction appears likely to be the best training ground for all ADR practitioners working in the construction industry, but good analytical, verbal and written communication ability is a vital part of the role as well as industry and related technical knowledge. If this is so, then industry and community key stakeholders should identify, train and/or approve a range of ADR practitioners who may or may not have other relevant qualifications. Such issues require further consideration and research. Essential differences between the ideal aims and practices of courts and lawyers, in comparison to those of ADR practitioners, should also be conceptualised in this context, before comparing the apparent value of their outcomes.

The Australian Council for Safety and Quality in Health Care (2002) has developed a standard on open disclosure when things go wrong with treatment. This challenges the automatic legal assumption that health workers should keep quiet about mistakes in case they incriminate themselves. The National Health and Medical Research Council will become a statutory authority in 2006. This appears to require cooperative adaptation of collegiate goals and structures to achieve national health goals through the application of commercial disciplines unless another course of action is clearly and openly dictated. State legal and related professional and academic administrative requirements currently frustrate quality management for care improvements in many health services and related areas. (Review of Professional Indemnity Arrangements for Health Care Professions 1995; Australian Health

Ministers' Advisory Council 1996; National Expert Advisory Group on Safety and Quality in Australian Health Care 1999; Review of Higher Education Financing and Policy 1997; Senate Employment, Workplace Relations, Small Business and Education References Committee 2001; Productivity Commission 2005.) The development of effective ADR processes and related education may assist resolution of these problems. However, even though clear separation of policy and administration is increasingly recognized as necessary to judge comparative outcomes of competing service provision effectively, state freedom of information legislation currently relates only to the public sector, and medico-legal information is exempt. This inhibits identification of effective services as well as ADR, and tilts the playing field further towards courts. It appears that a great deal of dysfunctional regulation currently prevents a more consultative, open and scientific approaches to achieving all service improvement.

Identify and justify the appropriate roles of courts and all related ADR

Tribunals and related forms of ADR have been set up since a British colony was established in Australia. Conciliation and arbitration acts and commissions established at the turn of the 20th century have been, perhaps, the most characteristically Australian outcome of a rejection of the traditional British adversarial approach. These presided over development of awards and agreements which outline the expected treatment of groups of people at work, rather than dealing with disputing individuals. The former vice chancellor of the University of NSW recommended appropriate tribunal integration (Niland 1989) but it is not achieved so far. The aim of ADR practitioners, apparently in contrast to that of courts, should be broadly scientific and consistent with quality management. In practice, many existing forms of ADR have their origins in courts. Operations may also be influenced by legal powers.

For example, the NSW workers' compensation commission is an independent tribunal set up in 2002 to resolve workers' compensation disputes. The compensation court closed in 2003. Arbitrators may exercise mediation and conciliation skills to settle disputes. An arbitrator works with the parties in conference-style meetings, by telephone and in person to assist them to resolve issues, or makes a determination where this is not possible. During 2003 the Commission expanded its access to approved medical specialists so that it now has 200, compared with 91 arbitrators (WorkCover 2004). They are approved by relevant government and industry representatives to make independent judgments about disability and related matters, rather than being attached by their remuneration to the expectations of opposing lawyers or the courts. The ADR process ideally enhances the scientific objectivity of all potential judgments and reduces the costs of adversarialism. However, the President of the Workers Compensation Commission pointed out that stakeholders such as lawyers, are used to the traditional courtroom approach, and require education. (WorkCover, 2004).

ADR may also be under the control of courts. For example, the Family Court has recently commenced a new children's cases program which has adopted parenting plans and a more permissive application of the legal rules of evidence (House of Representatives Standing Committee on Family and Community Affairs 2003). The most consistent finding of research into legally driven mediation is high client

satisfaction, although general public awareness of mediation appears limited and uptake of voluntary mediation is low (Mack, 2003). The evidence from other jurisdictions suggests the comparatively greater efficacy of ADR processes in comparison with those of courts (Grabosky and Braithwaite 1993; Fisse and Braithwaite 1993; Strang and Braithwaite 2001; Braithwaite 2002).

Better designed, more open administrative systems and related research are necessary in order to identify those treatments and services which are apparently most effective. The relationship between courts and ADR systems should logically relate to this. Human rights may be better conceptualised in a flexible, health related light rather than through the normal court process based on the adversarial tradition. From the health and sustainable development perspective, the information on particular complaints and their resolution should provide data to help solve many related problems. For this to occur, the parties in dispute must have confidence that their concerns will be fully appreciated and treated in an unbiased fashion. Those in dispute should be able to bring someone to speak on their behalf and all people who have something to say about a matter should normally be heard. Representatives of the relevant industry or community key stakeholders may act alone as ADR practitioners, or act on ADR panels, to assist resolution or make determinations.

Education and research the comparative outcomes of all forms of dispute resolution

In Australia most post-secondary education occurs in universities which are self-accrediting institutions, or in technical and further education (TAFE) colleges. Both are public institutions but universities are a Commonwealth funding responsibility and state governments are responsible for TAFE. The National Expert Advisory Group on Safety and Quality in Australian Health Care (1999) called for a national effort to improve education of health care providers and advised that curricula for continuous quality improvement should be included in all undergraduate, postgraduate and continuing education. It is hypothesised that all dispute resolution services, like education or training, should be vocationally based, according to a broad understanding of the requirements of the industrial or other community context for which it is primarily required. This is the assumption, which has traditionally been made, for example, in state government selection of occupational health and safety inspectors. In settling workplace disputes, with or without the aid of independent experts, inspectors may be seen as conciliators or arbitrators, under another name. More flexible and effectively coordinated education provision and related research should now be promoted by key industry and community stakeholders. This may be undertaken through regional networks of inquiry-based learning at work and in communities. This should also facilitate a consultative approach to implementation of relevant health and environmental standards, and to the identification of those practices and programs which appear most necessary to improve quality of life for communities and individuals.

The effectiveness of all relevant scientific, legal and related paradigms for evidence gathering, analysis, judgment and recording require continuing, systematic analysis, in order to determine their comparative power to meet the needs of communities and their key stakeholders. Independence may be conceptualised in this context as the responsibility to make informed decisions, which can withstand public interest based

scrutiny from any quarter. This emphasis on transparency is also consistent with existing academic rights to freedom of speech and related academic duties to become increasingly informed from an appropriately scientific perspective. It is hypothesised that key stakeholders in industry and other relevant communities should approve ADR providers. Ideally, this should lead to more sustainable development as a result of more data driven and health social practices and outcomes. Such hypotheses require testing through comparative research. The Health and Medical Research Strategic Review (1997) suggested that Australia should develop a focus on the prioritised creation and assessment of interventions and policy. Adopting WHO definitions it indicated that the national research effort should take three forms. Fundamental research should generate knowledge about problems of scientific significance. Strategic research should generate knowledge about specific health needs and problems. Research for development and evaluation should create and assess products, interventions and instruments of policy which seek to improve upon existing options.

In this context, the establishment of ADR systems and the comparative identification of their outcomes is a type of action research, which is also consistent with the views of Popper (1972) that all administration should be regarded as experiment. Action research is a problem focused activity proceeding in a spiral of steps, composed of planning, action and evaluation of the results of action. Community education, consultation, monitoring and outcome evaluation are also centrally necessary in action research. Ideally, it is seen as a collective, emancipatory practice for the community involved. In order to understand and change social practices, social scientists have to include relevant community based practitioners in all phases of inquiry (Kemmis and McTaggert 1990; Hart and Bond 1995). The need for community involvement in all health policy development and administration has long been acknowledged in national health service goals (Commonwealth Department of Community Services and Health 1994), if not in all professional or bureaucratic practice. The attainment of community wellbeing is also closely related to the achievement of national mental health and Aboriginal health goals. The establishment and trial of ADR models is hypothesised to be a comparatively effective process for assisting achievement of all these related aims.

Conclusion

The appropriate relationships between courts and ADR need to be reconceptualized in the light of new international governance requirements and related developments in Australia.
Community demands for health and justice need to be met and delivered through appropriately designed and coordinated services which produce data to promote health and sustainable development. In order to develop effective prosecution or other dispute resolution procedures and supporting training or accreditation systems, the major dispute resolution needs must first be identified by the key stakeholders in Australian industry and community context. This must also be done in the context of knowledge of the laws or related community standards which relevant groups of dispute resolution practitioners may normally be expected to uphold to achieve health and sustainable development goals. Research into the development of effective dispute resolution systems should be supported by related inquiry into how vocational

education systems could be more effectively linked to each other and to the requirements of the relevant industries and communities which should support them.

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