THE SYDNEY PAPERS

Autumn 2001
Volume 13
Number 2

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Registered by Australia Post - Print Post No. PP 225920/00012

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The Sydney Papers is a quarterly journal published by The Sydney Institute, A.C.N. 003 732 929.

41 Phillip Street, Sydney, Australia. Annual Subscription to *The Sydney Papers* is $33.00 (inc. GST) or available inclusive with Associate or Full Subscriber membership of The Sydney Institute. The views expressed in *The Sydney Papers* are those of the authors and do not necessarily reflect the views of The Sydney Institute or of its Governors.

Layout & Typesetting by: CMC, Unit1 "The Berkeley", 25 Market Street (corner Kent Street), Sydney, NSW 2000 Australia. Phone: (02) 9261 0700 Fax: (02) 9264 9547.

Printed by: Emerald Press Pty Ltd, Unit 41, 7 Salisbury Road, Castle Hill, NSW 2154. Phone: (02) 9894 6072 Fax: (02) 9899 6705

Cover & inside front cover design by: DT Graphics, 202A Lyons Road, Drummoyne NSW 2047. Phone: (02) 9719 1424 Fax: (02) 9719 1415.

THE SYDNEY PAPERS **Vol. 13 No. 2.** **Autumn 2001**

Published by The Sydney Institute Publications Pty. Limited

The Sydney Papers

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STRUCTURED

SETTLEMENTS

Danna Vale

Structured settlements are not just something of importance to the government and it's not just something for the victims. It's something for every one of us. One of the realities of living today, is that no one is protected from accidents. And that's one of the terrifying things to consider – it could happen to you or to me.

I'd like to talk, very briefly, about people, particularly about people, and also a little about policy and action. As I've said, it is the very human need for structured settlements that is of great concern to me.

Initially I met Judie and Jackson after Jackson's accident. You have in Judie one of those individuals who has discovered personal power. There is no doubt that Judie is going to achieve her objectives. And since I've been working in my electorate, as a Member of Parliament, I've come to know many people who have moving personal stories, whose lives have been changed by law or by accident. I've also come to know of the heartache and the emotional turmoil that can happen to families, when all of a sudden a very special loved one has been injured and whose life has been changed.

I want to talk to you about a particular person tonight. I'm going to call him David, which is his real name, because he has written a book of poems and I'd like to promote his book. I first met David when he came past our office one day. He knocked over our carousel with brochures in it. He smashed it and threw it down onto the street. He was angry. So we bought him in to my office and talked to him. Later, his dad came to see us and afterwards we got to know David.

David is under strict medication at the moment. But when I heard his particular story, I found it quite heartbreaking. David had a promising future as an actuary. His story is briefly sketched on the back cover of his book *Nature and Love*. Having been injured in a car accident, young David held on for dear life. He was a brilliant pure mathematician, with excellent skills in the sciences. David is also a lover of truth and nature. In this book of poems and biographical notes,

David tells his story of tragedy, his sense of life and his courage to express the deepest feelings that we all share.

Now, David got a significant payout for his accident. When he was only 18, he had been doing four unit maths at a local high school and he actually got into a job, a summer clerkship, with a significant actuarial firm. But during those summer holidays he was involved in a car accident. He wasn't the driver. He was one of four boys in the car and you've probably heard the story many times. He was actually thrown out of the car, received very serious injuries and he was in a coma for six months. He wasn't expected to live.

When David did come around; he was very severely brain damaged, although not in the sense of intellect. He has gone on to university and he has obtained a Batchelor of Science degree with a double major in mathematics and a Graduate Diploma in Economics. He's lost some social skills and receives treatment for schizophrenia. What distressed me about David was that people like David have to make a lump sum last for the rest of their lives and this attracts "friends". And I think David might have found a lot of these so-called friends.

One day we met David in the street and he was very excited. He was always interested in politics and we had many political discussions from time to time. He had a group of friends who were going to sponsor him to become a senator in Queensland. And it was very difficult for us to say, "David, I don't think they're being serious." He was so happy about the prospect. And that's exactly where he went – to Queensland to become a senator. But some months later when we met David again, he was $42,000 poorer. Now this is one of the very important reasons we need structured settlements for people like David.

Young Jackson has Judie, who's looking after his affairs. But people like David are vulnerable. They are vulnerable to those so-called friends. It's amazing because David has this certain honesty – he tells people about his financial affairs and you do find people who have suffered a tragedy will often talk about their situation very openly.

The only way I believe we can actually protect such people for their future is in structured settlements. There are also other occasions which you may have read about in the newspapers. Some people receive a huge lump sum settlement because of a traumatic experience in their lives that's affected them, not only physically, but emotionally and psychologically. They've been known to gamble away their last dollar. It seems to me that there should be some responsibility on clubs or pubs to prevent people in that situation from doing that sort of thing.

But, as a parliamentarian, I feel a final statement has to be made by people like me, to try and make the world a better and a safer place for people like David; to have some form of protection so that the money they are given will last them for care services and for whatever

commitments they need from the wider community. And for these very important reasons our proposal should be rationally supported.

From David's book, *Nature and Love*, I would just like to read you one of his comments. Can I say also, he has a great generosity of spirit. He really is an optimist, an eternal optimist. Sometimes you see his situation and you wonder why. This poem is about friendship – it's only very short.

Friendship bears compatriotism and compassion.
Through understanding each other, friends shine like a lighthouse.
Friendship renews itself each time mates meet.
It is not only love, it is a feat.
One has to be careful when making friends.
Some people just want to use you and exploit your kind nature.
They will pass and go out like an outgoing tide.
A good friend will always return your kindness.
Good friendship will last for eternity.
Good friends and family will last for a person's lifetime.

I want to say something about policy because I believe that the government does have a very real responsibility to care for its most vulnerable. We need legislation enacted to provide statutory periodic payments, demonstrating awareness by governments that lump sums are not always ideal. Structured settlements are a simple and effective way to improve our compensation law and to help protect people like David.

Structured settlements are good, responsible, social policy. They are logical, they are rational and these are the best reasons behind any proposed change. They have been carefully thought out. The economic implications have been calculated and do not invalidate the arguments – as a matter of fact they support the power of periodic payments.

I believe this policy makes excellent sense and it makes excellent sense for government and families and the taxpayer. This is the type of policy the government should be implementing. It seems to me that government should be taking a leadership role to actively encourage responsible and protective behaviour for accident victims.

I'm very aware that there are many of my colleagues both in government and in the Opposition who do support structured settlements. Jane is right when she talks about the problems of finding the right people in government to talk to you; people who will take responsibility and take the role and the commitment to deal with a very special issue. Our system of government is certainly not perfect, but then again it is up to us to make it a caring institution.

It has been said that nothing is more powerful than an idea whose time has come. And I really do believe that the time for structured settlements is well and truly here. It is a matter of commonsense and it's a matter of good policy. It is a win for the government, a win for victims and a win for every Australian citizen. For me I will continue to

actively encourage structured settlements within my government and be there to support Jane and Judie.

And I also want to thank each and every one of you for being here today because being able to tell you and address you about structured settlements – is a very, very important way of creating awareness in our community of the very great need for our tax law to change.

I can assure you that we won't give up.

1. Rhonda Moore, Duncan Chappell, Dorothy Masterman
2. Lena Winton, Peter Winton
3. John Mundy, Robert Grundy
4. Jason Chang
5. Jan Kaufman, Tuc Le
6. Elaine Lindsay
7. Ron Polson, Ian Jagelman

Photographer: David Karonidis

PROTECTING *PEOPLE*

Judie Stephens

Thank you, The Sydney Institute, for this important opportunity to present a real solution that will protect the most vulnerable in Australian society. In the words of Prime Minister John Howard, in the *Weekend Australian*, 27 March 1999, "Truly great nations find ways to nurture their societies."

May I tell you my story?

I was 49 years of age on 27 November 1993. A businesswoman and relatively happy with my lot. On that morning, our family was totally shattered. My daughter, Amanda and her husband, Jay, were killed in a motor accident. Their three children, Matthew (five), David (three) and Jackson (only three months) survived. Jackson sustained catastrophic injuries. He suffers from quadriplegia. He is brain damaged and visually impaired. Jackson, today, is a wonderful little seven-year-old, we live very happily together and he is the delight of my life.

After the tragic accident and six months in hospital, Jackson came home to live with me. I provided his 24 hour care for in excess of two years and then I collapsed. In this major mess, I went to court to attempt to get adequate payments for Jackson's 24 hour care.

What happens when a family is thrown apart? In our case, the social fabric of our family will never be the same again. It caused anger and blame. It has brought together my husband, Peter and I, who are separated to share the parenting of Jackson. Peter is the one that makes it possible for me to do this work. Jackson will be entitled to compensation for his injuries as others are in motor accidents, workers compensation and medical negligence. I speak for all the compensable victims in Australia.

From about January 1997 to January 1999, I went it alone. I looked within Australia for solutions to help people who are catastrophically injured. I pondered why structured settlements should be available by **choice** in the USA, Canada and the UK and not in Australia?

I read books, one in particular *Planning for the Future* by L Mark Russell, showing ways of providing a meaningful life for a child with a disability after the death of their parents and carers.

Indeed, I was very concerned about what happens after a court case is completed and compensation is paid. Usually, a family is totally exhausted, emotionally and physically, by the trauma of providing care and holding it all together. How can we possibly expect a family to be able to make totally accurate and long term successful financial decisions for the lifetime of their dearly loved and injured family member?

My long time friend is Danna Vale MP, Federal Member for Hughes. We have known each other for over ten years and Danna met Jackson at his pre-school in her electorate. Danna embraces the structured settlement concept. Thank you Danna. She and I both understand the absolute importance of ensuring that our catastrophically injured people have the opportunity of lifetime indexed payments to pay for the injured person's care, rehabilitation and medical requirements. It was Danna who spoke personally with our Prime Minister and took us to his advisers, Treasury and many other Federal and State Government Departments.

Another door opened early in 1999. I met Jane Ferguson who was setting up the Structured Settlement Group and Dr Richard Tjiong, Chairman of United Medical Protection was the first Chairman of Group. There, to my amazement, I realised that the parties that wanted structured settlements were the Plaintiffs and the Insurers from opposing sides all of whom are members of the Structured Settlement Group.

- Australian Plaintiff Lawyers Association and The Insurance Council of Australia
- Australian Medical Association, Australian Association of Surgeons and United Medical Protection

These organisations and many others are members and each share **ONE** common interest to protect their injured.

David Bowen, General Manager of the Motor Accidents Authority, shares our vision and now is the Chairman of the Structured Settlement Group. It is thanks to the MAA for their financial support that the opportunity has been made possible for Jane Ferguson and I to continue our lobbying. The MAA also paid for the drafting and publication the Structured Settlement proposal which can be found on *www.daretodo.asn.au*, our community website.

What are we asking for? Good, honest and socially just structured settlements that have been embraced and are working well in the US, Canada and UK. When people receive common law compensation for personal injury they should be able to choose to receive a smaller lump sum plus periodic payments (which is a structured settlement) and it should be clear that no tax is payable upon receipt of each periodic payment.

To clarify this tax treatment, only a small amendment to the tax law is necessary. The periodic payments are calculated on a net of tax basis so it makes sense that no tax should be payable – just like when a lump sum is received, it should be tax free. A small taxation amendment is the solution. This tax treatment would only apply where common law compensation was agreed to be paid in the form of a structured settlement at the time of settlement. There is no risk of it impacting upon other areas of tax law.

Jackson and I met with Senator Rod Kemp, Deputy Treasurer. We met with him and his entourage in Sydney. We know that this taxation policy is in his portfolio and we asked him on behalf of all compensable accident victims for a fair and just taxation system. Kelvin Thomson, Shadow Assistant Treasurer has met with Jackson and I and he also embraces the concept of Structured Settlements. This is bipartisan; there has been no opposition from any political party, nor any politician.

Consider it from a judge's perspective:

> I vividly remember meeting the mother of someone very like Tony whom I had to advise some years after the settlement. I met her in the street and she told me that the one thing that had gone absolutely right over the intervening period was the structured settlement, the regular arrival of cheques without worry of tax, without the worry of the retail price index going up. So from her, through me, you have a personal commendation of the advantages of this. – Mr Justice Holland, *Wells v Mehes*

Indeed, it must be hard for judges to put a "use by" date on the life of a plaintiff.

Let's cast our thoughts back to recent Australian compensation stories that have caused great grief.

- *Sydney Morning Herald*, 5 August 2000, John Blake's Progress – John Blake's compensation is disappearing fast.
- *The Age*, June 2000, Geelong reels as another pillar of the community crumbles – accident victim Tom's $6 million lump sum was supposedly invested by Frank De Stefano who gambled away his client's money.
- We now have a medical crisis in Australia. "80 per cent of claims arise from procedures carried out at public hospitals. Claims are escalating by 500 per cent over the past five years. And 35 of every 1000 doctors in NSW are now facing lawsuits". (Kerry Chikarovski MP, Press Release 13 February 2001).

Structured settlements are a tool that will assist those that are catastrophically injured to have their lifetime medical, rehabilitation and care needs paid. This is not the panacea but another tool to assist in the saving of Professional Indemnity premiums for our doctors and also caring for our most injured.

Think of people that you know who have received compensation. Was their settlement money well managed? Imagine that you were given your life savings today and you have to get it right. But of course, if you didn't, you could fall into the social security network, medicare and charity. But you do have a second chance, if you waste your next pay packet, it is okay. For some people, it isn't. Where there is big money, there is greed. Structured settlements will protect our most vulnerable injured citizens.

For my grandson, Jackson, I want his care, rehabilitation and medical paid for the rest of his life. He needs the promise of knowing that this will continue after I am gone. There is absolutely no desire for me to create wealth within our family because of Jackson tragedy. He needs what he needs. No more, no less. This is an important social justice plea for all compensable accident victims.

A friend of mine suggested the power of a website to assist our lobby. We chatted over dinner and introductions were made to Professor Jane Cooper and Lois Burgess of Wollongong University. Our community website *Dare to Do Australia* has been set up and managed by the students. A great experience! I remember being invited to Parliament House and asked to speak to thank these people, I said, "It is amazing that I can press a button and contact any or every politician in Australia."

October 1999, a surprise! The Australian Plaintiff Lawyers Association awarded me the Civil Justice Award for the work I am doing lobbying for structured settlements. People do watch – people do care.

I want to send this vital message to government. I want those in positions of power to understand that structured settlements will make an enormous difference to the quality of life for accident victims. Surely, we must judge our government by how they care for their most vulnerable, most injured and most needy victims. Here is the opportunity to bring about positive change. A win for accident victims. A win for government. And a win for every tax paying Australian.

My focus has been positive but there is one major negative aspect. Federal Treasury gave inaccurate and incomplete information to our politicians. Amazing, our bean counters can't count beans! They said, "structured settlements would cost the government money."

Richard Cumpston's Actuarial Report, February 2000, clearly shows us all the potential costs and savings from structured settlements. When structured settlements are implemented….

- The saving estimate for social security is between 2 million and 4.1 million per annum.
- The government's health care savings are between 4.5 and 9 million.

- The tax on the interest of lump sums would present a loss of 2.6 million to 5.2 million.
- The net savings to the government and the Australian taxpayer on structured settlements would be 3.9 to 7.9 million annually. What a saving.

New Year's Day at Centennial Park was fun for me. I spoke to Prime Minister John Howard and his wife Janette. On shaking hands, I introduced myself and there was no recognition from Mr Howard until I said, "structured settlements" and he said, "I know." And smiled.

Only last week, there was a timely achievement. Zurich, a forward thinking third party insurer, successfully agreed to a structured settlement, without the vital taxation amendment. This was approved under Section 81 of the Motor Accidents Act 1988. The plaintiff was in a motor vehicle accident in 1998, and he has vegetative tetraplegia. The medical evidence said, "he had a life expectance of zero to fourteen years". If our medical experts are at such odds, it makes it a very difficult task judicial system. This gentleman will have his care, medical and rehabilitation needs paid for life.

Zurich cared for their client. The plaintiff legal advisers also cared for their client. However, it was Zurich who funded this settlement for a person who does not have a long life expectancy. So the plaintiff will not be bothered with tax but the insurer will still have to make the payments. You can see the importance of the tax amendment so people can buy a regular income stream that is indexed to the CPI. This will pay for their needs until they die. Zurich and all structured settlement supporters want every injured Plaintiff to be justly compensated for life without being a burden on any system, individual or family.

Yesterday, Kerry Chikarovski MP, Leader of the Opposition in NSW said, "Doctors are leaving our public hospitals because they can no longer afford the cost of the rising insurance premiums". Chris Hartcher MP, Shadow Attorney General embargoed the discussion paper, "Medical Negligence: Reform or Restructure?" Indeed, structured settlements are part of the solution.

When I took Jackson to meet Senator Rod Kemp in July 1999, I said, "The compensable accident victims in Australia will welcome a yes whenever you are prepared to give it. But if you dare to give us no, we will keep on, keep on and keep on until you give us a yes."

To conclude, let me tell you a story.

I was in Manly once and there was a man who threw some stones on the ground, runes as he called them. He said, Judie, something is going to happen to you. If you look inwards it will not be good, you must go beyond the boundaries that you've known. I had no idea what he meant.

After the accident, for the first two years I was very, very sad. I thought life was too hard to live for Jackson and I. I was exhausted. But

once things fell into place in a better fashion, I saw beyond our own tragedy. And that made my life much better. Jackson adds to my life a quality that no one else could. First of all he is a child; he is not an invalid person. When people see him you can see them step back but I absolutely love living with him.

When we get the structured settlement, and we will, I would like to work in education for lawyers, plaintiffs and defendants, and with similar people, to help work out the best way to use it. A structured settlement is not for everybody. It is not an absolute solution for all, but it could be for some. It is a much better way for our catastrophically injured people remembering things can go terribly wrong with a lot of money. So we need to look at a secure solution and the promise that the indexed income stream continues regularly.

I don't get paid for my law reform advocacy work. This, in fact, cost me thousands of dollars. Coming tonight cost me $300. I had to get someone to write a paper and it took me about two days. And I had to think about it, because you're educated people, you're decision makers. So I had to make my quarter of an hour speaking to you effective. It was worth every cent.

Photo – David Karonidis

There are a growing number of voices asking government to make structured settlements a common alternative to the compensatory lump sum payments given to accident victims. Structured settlements are aimed at reforming taxation in order to ensure that structured payments to catastrophically injured accident compensation victims are made with the same tax status as lump sum payments. Jane Ferguson and Judie Stephens who are law reform advocates, along with Danna Vale MHR and Member for Hughes, addressed The Sydney Institute on Wednesday 14 February 2001, to put the case for Structured Settlements.

STRUCTURED *SETTLEMENTS*

Jane Ferguson

Thank you to The Sydney Institute for this opportunity to speak about structured settlements. It is a subject about which I am passionate, having worked towards their introduction in Australia for the past five years.

Today my job is to do two things; firstly to explain what structured settlements are and why they are a good idea, and secondly to tell you about the long road to reform so far.

Before I get into the details, let me set the scene by posing this question: how would you feel if you were given your lifetime's earnings in a single lump sum today? Would you feel confident that you would make the right decisions from day one? This is a fairly educated crowd here tonight. What if you weren't highly educated? What if you had suffered a catastrophic injury and had your life turned upside down? Why do we expect the severely injured to be able to take on this responsibility?

Let me put the policy idea of structured settlements into context. We are talking here about common law compensation for personal injury. Under the common law if you suffer a compensable personal injury then you are entitled to receive lump sum compensation. The common law has been around for a very long time and it still works well, but when it was developed in old England people who suffered serious injuries usually died. If they suffered only minor injuries then a lump sum was appropriate and they could go back to getting on with their lives.

Times have changed and we now live in a more financially and medically sophisticated world. Advances in medical and trauma care mean that people can survive catastrophic injuries and go on to live normal or nearly normal life expectancies. Governments have recognised this and over time have introduced a number of statutory schemes, which provide statutory periodic payments, such as statutory weekly payments of workers compensation. But the common law is alive and well and is an important part of our legal system.

All medical negligence and public liability compensation payments are common law-based, Australia-wide. Compensation for

injuries sustained in motor vehicle accidents is paid under the common law, although the common law is modified by state government legislation to varying degrees. Compensation for injuries sustained at work is generally paid under State-based statutory schemes, however the common law is usually retained in cases involving very serious injuries, so is still relevant.

Structured settlements are an alternative to common law lump sum compensation. They are available overseas (in the United Kingdom, the United States and Canada) by choice. We believe that in Australia, like overseas, if an accident victim who is entitled to common law compensation wants a lump sum, then they should be able to choose a lump sum. But if they would prefer periodic payments, then this should also be available.

Structured settlements always do include an up front lump sum amount. Where they are used overseas usually about a third, or often half, of a total settlement package is paid as a lump sum. The lump sum is needed to pay debts, lawyers, modifying houses, and those sorts of things. But the other half or two thirds of the settlement money is paid in the form of periodic payments for life.

Very simply, we believe that in Australia accident victims who are entitled to common law compensation should be able to have a real choice between either a lump sum or a structured settlement.

The question is, why aren't structured settlements used in Australia? Why don't people use them now? And the answer to that question is tax; there is a tax disincentive associated with periodic payments. In Australia a lump sum, when you receive it, is tax-free. The lump sum is calculated on a net of tax basis, so it makes sense that it should be tax-free upon receipt.

In Australia, the Tax Office has indicated to us, that if structured settlements were used, then part of the periodic payments would be subject to income tax. It's actually not clear whether or not they would, in fact, be properly subject to income tax under the law, but nobody has been game (or had the money or energy) to take this risk and have to argue about the tax issues in court. Plaintiffs don't want to risk paying the extra tax, so they always opt for the lump sum.

My view is that until it is clear that structured settlements are tax free upon receipt, nobody is going to use them. We've been pressing the federal government on this issue for a long time, trying to explain the benefits of structured settlements. We feel that there are both social and economic reasons that justify the introduction of structured settlements to Australia. Just quickly, I'll explain some of the social reasons.

Firstly, from the plaintiff's point of view (the injured person), periodic payments are much easier to handle. As we started off, it would be very difficult for any of us to manage a large lump sum. Most

of us just don't have the experience or the expertise. A problem with lump sums is the stress, the worry, the concern about having invested in the right place with the right people, about the amounts drawn down, etc. Often parents are investing money on behalf of their injured children and they feel unprepared for this enormous responsibility.

Lump sums mean that an accident victim is bearing their so-called mortality risk (ie. the risk of living longer than expected). Nobody knows how long they will live. People who can't go back to work are concerned that their compensation money will run out before they die. Statistics and studies done, both in Australia and overseas, show that people who receive lump sums usually go one way or the other. Either they are not concerned or not aware of the problems and risks, and they tend to spend the money too quickly. Or they're so worried about the money that in fact they won't spend it on the care and treatment that they should have.

Often the money from a lump sum is not used for the purposes for which it was paid. The money is paid in order to meet the injured person's care and living costs. But often – because of the way it is paid – the lump sum is spent on all sorts of other things. Sometimes it isn't used by the accident victim, but is spent on family and "friends". There is a lot of pressure on the recipients of large lump sum settlements. It puts them into a difficult situation in relation to others.

Another benefit with structured settlements is that people retain choice. Firstly, they have a choice about whether they want a structured settlement or not. Nobody can be forced to have one. Then, if the person receives their compensation money over time, he or she will be able to choose how to spend it to meet their daily needs. They retain control over their daily lives.

Some of you may have seen articles in the newspapers over time about what's happened to lump sums – of money being gambled, money going to financial advisers who don't do the right thing, etc. It's a serious problem. Large lump sums can disappear fast. Weekly or fortnightly compensation payments cannot disappear in this way and are more likely to be spent for the purposes for which they are paid.

We think the structured settlement approach is good for social reasons, but it also makes economic sense. For a start, it works within the existing system. It does not require any change to compensation law at all. There is no need to set up a complex and expensive administrative system. It makes use of existing methods and practices.

Today lump sum settlements are made out of court and structured settlements would also be made out of court. It would simply be up to the parties to agree between themselves as to the terms of the settlement. As with lump sums, the courts would provide an oversight role in approving settlement agreements involving minors and those with mental incapacities.

In terms of the cost, structured settlements are not going to cost any more. A structured settlement would cost about the same as the alternative lump sum settlement. From the defendant insurer's point of view they simply involve writing out two cheques instead of one: one cheque being for the up front lump sum and the second being to pay for the financial product providing the income stream. Once the case has been settled and the cheques have been paid, the defendant insurer can close its books and the case is over. The accident victim will have their up front lump sum amount and the security of a flow of periodic payments for life.

Another important economic factor is that the introduction of structured settlements would actually save the federal government money. We've had two actuarial reports done. Both of them conclude that there would be a positive result for the federal government. Any potential loss in tax revenue would be more than made up for in savings for social security and health.

For example, if somebody did receive a lump sum and put it in the bank or invested it and earned interest, that interest would be taxed as income. So there would be some small tax revenue under the lump sum system. If you receive a structured settlement, under the model we're proposing, those periodic payments would also be received tax-free. Tax would also be payable if those periodic payments were invested and earned interest. But assuming the accident victim spent and did not invest their periodic payments, then there is a potential loss of tax revenue compared with a lump sum (because the lump sum is more likely to be invested and generate interest income).

However there is no guarantee that a lump sum will be properly invested and generate income. It could easily be rapidly dissipated. Lump sums do tend to run out quickly and when that happens people have no choice but to fall back on charity or government welfare. This costs the government. Weighing up the potential loss of tax revenue and the potential savings to social security and health – the conclusion is that there would be overall savings to the federal government.

To summarise, and I'm sure you get the picture by now, structured settlements are an alternative way of paying common law compensations for personal injury. This is a policy idea that makes both social and economic sense. They are a sensible policy idea.

Now I just want to tell you about some history and what's been happening in Australia to date. Structured settlements were introduced in Canada and America back in the 1970s. The idea was picked up in England where there was a full government inquiry into the issue and the conclusion was that it was a good idea. At first they were introduced in the UK under a ruling from the British Tax Office and then there was legislation. The legislation confirmed the tax-free status of structured settlement payments. The amendment that was made in

England is the same amendment that we are seeking here. It is a very simple provision with no scope for abuse, which can be inserted into our Tax Act. The provision and the structured settlement system has been working well in England.

Obviously since they have been introduced in England, there has been a lot more interest in structured settlements in Australia. In 1994 we had the first and only Australian structured settlement conference where people got together to discuss the issue. The next year, in 1995, a report came out from the Professional Indemnity Review.This was a federal government report organised through the Health Department. Fiona Tito, the author, concluded very strongly in favour of structured settlements and recommended the tax law be changed so that we could go ahead. A lot of people felt that there would be action straight away, but here we are today, so it's not yet happened.

In 1997 the New South Wales Motor Accidents Authority (MAA) took the initiative and decided to try to do something to introduce structured settlements. Its charter provided that it should investigate improved methods of compensation. The MAA is the statutory body in charge of motor accidents in New South Wales.

The MAA asked me to help write a detailed report, which set out all the information that the federal government might want to make a decision on the issue. The report set out the case of structured settlements and enclosed the report from an actuary giving some broad statistics on what it might save the government (depending upon how many people chose structured settlements). This initiative by the MAA was strongly supported by the New South Wales government.

The report went from the New South Wales government to the federal government and then there was pretty much silence. Finally we received a letter saying, essentially, no. It was a very short letter saying that the government felt that periodic payments were a good idea, but that people should choose them regardless of the tax law. This might be a good idea in theory, but nobody was going to do it in practice.

When we got this, what we thought was a pretty out of hand rejection from the federal government at the end of 1998, we decided that there really needed to be a national campaign. We decided to get together all the stakeholders to get our message across to the federal government. The Structured Settlement Group was formed, with all the stakeholders as members. This was actually quite an amazing achievement, which I don't believe the federal government has recognised. It was the first time that plaintiffs, defendants, insurers and lawyers on both sides, could all agree on a law reform proposal that affected compensation law. It's quite rare for there to be such complete agreement.

Members of the Structured Settlement Group include the Law Council of Australia, the Insurance Council of Australia, the Australia Plaintiff Lawyers Association, Injuries Australia, the United Medical

Protection, which is the biggest insurer of doctors, and the AMA. It also includes the MAA, NRMA Insurance, the Institute of Actuaries of Australia, the Royal Colleges of Surgeons, and Obstetricians & Gynaecologists.

When the Structured Settlement Group formed, back at the beginning of 1999, that's when we linked up with both Judie Stephens and Danna Vale. We felt that we'd been putting our case to the government on a very technical, legal basis and hadn't achieved very much. We felt that we needed a bit more politics and a bit more passion – more of a human element. Judie Stephens had had an interest in this issue because of her investigations on behalf of her grandson, Jackson. Judie had already made contact with Dana Vale MP.

With the help of Judie and Danna, we put together a new proposal document for government from the Structured Settlement Group. We took it to Canberra in June 1999 and had a big launch in Parliament House. We invited the press and the politicians. We spoke about how hopeful we were about working with government on this issue and we highlighted the fact that there was unanimous agreement and no opposition to the proposal. With this new proposal document, we hoped that they would act.

From mid-1999 until the Budget in May 2000 we put all our resources into doing everything we could to progress the issue. We met with people from Treasury, we met with people from the Department of Family and Community Services and from the Department of Health. We met with Ministers, we met with backbenchers, with advisers, with people from the Departments. We appeared before a government committee. We spoke with the Government, the Opposition and the Democrats.

The Department of Treasury asked us for more statistics – we got a further actuarial report. We had countless meetings in Canberra. We wrote letters, we got the premiers of the state governments to write to the federal government saying that they support this issue. We've tried to do everything we could.

We sought the help of the media. All our dealings with the media were entirely positive and we didn't seek to criticise the government in any way. Our aim was to raise general awareness of the issue and to encourage the government to listen. We felt that if the government could see that this was something that is affecting real people out there, and they were reading about it in papers, then that might encourage them to act.

The Budget in May 2000 came and went and there was no action. We were frustrated and disappointed. Since then we haven't been as active, mainly because we didn't know what more we could do. We hadn't been given the reasons for the lack of action, so we didn't and don't know what we are fighting against.

So where are we now? Structured settlements are still a great policy idea with unanimous stakeholder support. There are ongoing problems with lump sums and we're still reading about them in the papers every other day.

In terms of the government perspective, we've had a lot of support from individual parliamentarians from both the major political parties and the smaller parties. We believe that there are some fundamental misunderstandings. Some information that has come back to us from Canberra indicates that there is a lack of understanding on behalf of some about what structured settlements are and how they would work. We've been told that the government doesn't want any more briefings on the issue, so we are in a quandary about how to proceed. There are misunderstandings and there is no action.

We accept responsibility for not succeeding in getting our message across clearly enough. We have not brought about a situation where there has been meaningful dialogue and debate. We are still trying and hope this year to have the opportunity to state our case clearly and be heard. If the government has valid objections or concerns we are keen to address and resolve them. If they cannot be resolved, then we are prepared to accept that and discontinue our efforts. But at this stage we aren't aware of what the government's objections are and we therefore aren't able to counter them. We don't believe that there are any problems that outweigh the benefits.

Since May last year the Structured Settlement Group has taken a more low key approach and has really just made itself available as a resource for information about structured settlements. We have had a chance to reflect on some of the issues and problems.

We suspect that the government might be concerned about flow on effects. If you make structured settlements tax-free, then perhaps there will be calls to make all sorts of payments tax-free. Maybe there will be pressure brought to bear to make workers compensation payments tax-free? That hasn't happened overseas anywhere. The way that structured settlements are defined and the exact wording of the proposed amendment to the Tax Act make it clear that the tax treatment couldn't apply anywhere other than common law payments of personal injury. So there is no potential for it spilling over into statutory payments.

We suspect that there may be a concern that people won't take up structured settlements if they are optional rather than mandatory. Structured settlements are optional overseas and are used in about a third of the serious cases. They don't need to be other than optional. They won't be appropriate in all cases and it should be up to the parties to determine what's best. Structured settlements are agreed to by the parties to a case as a form of out of court settlement agreement. They are

not something ordered by judges or forced upon the parties. The voluntary system works overseas and would work here. Let's give it a go!

We also suspect that it is always difficult to bring about law reform from outside government as opposed to an idea coming up from within government. It is also difficult to get the timing right. For the last few years the government has been busy with tax reform, but the focus has been business tax reform.

Another problem that we've encountered is that structured settlements is a cross portfolio issue – it involves both social issues and economic issues. The Department of Family and Community Services has been doing all it can to encourage periodic payments, but they say that they can't do anything about tax. As far as the Department of Treasury is concerned their focus is tax and revenue. Both departments are doing their job, but this doesn't allow government to see the broader picture. We'd like to see a whole-of-government approach to this issue.

We are still hopeful. We are still working towards resolution and are keen to have an opportunity to more clearly state our case to government and engage with them on the issue.

Photo – David Karonidis

Penelope Nelson

Rev. John Flynn was a minister of the Presbyterian Church who worked as a missionary in outback South Australia and was in charge of the Australian Inland Mission. In the 1920s, Flynn established the Royal Flying Doctor Service and organised a new radio service to facilitate long distance communication. In research for a book on extraordinary Australians and leadership, writer Penelope Nelson has put together a new portrait of John Flynn of the outback. Penelope Nelson addressed The Sydney Institute on Tuesday 20 February 2001, on the subject of Flynn's leadership. In 1999, Penelope Nelson managed the inaugural year of the Benevolent Society's Sydney Leadership program. Her most recent books include her autobiography, *Penny Dreadful*, and a novel, *Beyond Berlin*.

NATIONAL VISION,

JOHN FLYNN AND THE BLIND SPOTS OF LEADERSHIP

Penelope Nelson

Leadership is strikingly under-researched in Australia. So said Marion Simms at The Sydney Institute election forum on 30 January 2001. My own interest in leadership is linked to my work with the Benevolent Society's Sydney Leadership program. When the topic of Australian leadership arises, people move immediately to our prime ministers, ignoring leaders from other spheres. Challenged to name leaders with social vision, Australians do not typically come up with a rush of names. This talk stems from my search for compelling stories about people who create opportunities for others.

There are many different schemes to classify leaders. I am attracted by the work of Melbourne academic Graham Little, a political analyst who died in 2000. In his book *Political Ensembles*, Little distinguishes three main categories: Strong Leaders, Inspiring Leaders and Group Leaders.

Little placed Margaret Thatcher, Ronald Reagan, Malcolm Fraser, Helmut Kohl and Francois Mitterand in the category of strong leaders. Tough and decisive, strong leaders emphasise realism, results and the bottom line. Their weaknesses include crisis orientation, the need to prevail over everyone with a different opinion, and a fondness for hierarchies. Strong leaders attract followers who see the hierarchy as a natural structure in human relations.[1] John Howard would fit into this category.

Inspiring leaders, Little's second category, included John F. Kennedy, Harold Wilson, Gough Whitlam, Alexander Dubcek and David Lange. Inspiring leaders have the capacity to articulate the dreams of others, and to look ahead, seeing things in broad brushstrokes rather than detail. Followers look to the inspiring leader for ideas and see themselves exemplified in the leader. Followers may be trying to reconcile conflicts of their own or in search of a "calling" shared by the leader.[2] Little pointed out that leaders with the power to inspire may be

opening Pandora's box – "liberating hopes and arousing fears which Strong Leaders would later try to damp down and control."[3]

If I could refer again to the election forum on 30 January, David Barnett was scathing about Paul Keating's Prime Ministership while reasonably admiring of his period as treasurer. On Little's paradigm, many Australians would have expected Keating to be a strong leader as Prime Minister – he'd been Placido Domingo as Treasurer, after all. Instead, he set out to reinvent himself as an inspiring leader, introducing the republic as a major national theme and making a stand on Mabo, Wik and reconciliation. Conservatives who'd been expecting an economic focus didn't know what to think. Howard has been damping down those hopes and fears for the past few years. Getting them all back into the box is a bit trickier. Pauline Hanson could be classed as an inspiring leader with a bitter twist.

Examples from Graham Little's third category – group leaders – were Jimmy Carter, Walter Mondale, Michael Foot, Jim Callaghan and Bill Hayden. Bob Hawke and Bill Clinton would also fit into the category of group leaders. These leaders instinctively consult, confer with colleagues and interest groups, and seek consensus rather than imposing the solution from the top. The group leader fosters solidarity, stressing trust, "the people", sympathy and humanism.[4]

There are no perfect people, least of all leaders. The very qualities that enable them to stand out from the pack often have a dark side. Success is dogged by compromise, corruption, lust for limelight, inflated egos and dogmatism. Idealists and gurus often have a narcissistic streak. Fame provokes envy which lets loose a lot of negative energy. Graham Greene remarked that success is only failure delayed. The Kitty Kelly type of popular biography delights in the extramarital affairs, substance abuse and behind the scenes scandals. Where once we had warts and all, we now get genital warts and all.

John Flynn, the subject of this talk, was without doubt an inspiring leader. He makes an interesting case study as a social leader of huge vision who set up the flying doctor scheme. Flynn avoided the twin perils of inspiring leadership – being undermined by administrative enemies and becoming a toxic guru. His reputation came under strenuous attack late in his career and those criticisms deserve some attention. As I look at his career and leadership style, I will include some of his blind spots. But I do not intend this to be a hatchet job.

Flynn of the Inland, the title of the Ion Idriess book, became the nickname or honorary title of pastor and health pioneer John Flynn. But Idriess had another name for the man whose life work was bringing health services to central Australia. He called him the Dreamer. Idriess described the problem that inspired Flynn's dream as almost impossible:

> He brooded on the distances necessary to bring medical help when in pain or to travel stock to market – that twenty days' rough travel necessary to transport a sick person from Alice Springs to Oodnadatta railhead, for instance. Even then a hospital was six hundred miles farther south. The lonely tracks of the Kimberleys with two doctors in an area of 137,294 square miles! One tiny school at each of the three little ports, none inland. The Northern Territory with one doctor and one school in an area of 523,600 square miles! No wonder the sick ones seldom arrived. Distances – distances – distances. How could those distances be eliminated; quick communication, quick travel be introduced? He sighed. A man out here in the Centre, travelling with camels, planning to modernize three parts of a continent in a day! No wonder the very sands mocked him.[5]

John Flynn was born in Moliagul in rural Victoria in 1880, the son of a teacher. When he was two, his mother died. Flynn and his elder brother and sister shuttled back and forth between their father and their grandparents. The family was Christian without being notably religious. Flynn grew up a tall, rather shy man with a capacity for hard work. Never a brilliant scholar, Flynn was an excellent debater and public speaker. He decided to train for the ministry but was sent to western Victoria where he proved his capacity to gain the trust of reticent country people. He was accepted for ordination as a Presbyterian minister despite having little talent for Hebrew and Greek. "They had to let the slip-rails down to get me through," he would say later.

In his twenties John Flynn sharpened his communication skills, becoming a practised writer and a competent photographer. He was always a great enthusiast for technology and visual communication. He published a useful booklet called *The Bushman's Companion*, which contains everything from first aid instructions to the words of a funeral service. It also devotes a few pages to celibacy for men. "Love casts out lust," Flynn wrote in a section headed "The Man Who Maintains in Himself what he Demands in Woman."

Ministering to remote shearers in Victoria and in South Australia, Flynn visited the quaintly named Smith of Dunesk Mission at Oodnadatta. There John Flynn saw the work of Sister Main, a deaconess and trained nurse who was the first paramedical missionary in what he called the Inland.

In early 1912 the Presbyterian Church commissioned Flynn to inquire into the missionary needs of Central Australia. He travelled from Sydney to Darwin by sea, arriving in June 1912. He went as far south as Katherine and as far north as Thursday Island. On this trip Flynn travelled overland by camel, the only time he did so, though the image persisted. The padre looming unexpectedly into sight on camel back became an outback legend. Many anecdotes about Flynn's colleagues attached themselves to him. Of course, the lone figure in the desert has religious connotations dating back to the Old Testament.

Later on Flynn used the temperamental cars of his day, always taking a full set of tools and spare parts. He also carried watchmaker's tools and over the years mended scores of outback clocks and watches.

In a strongly worded report, Flynn recommended the appointment of at least three itinerant missionaries or "patrol padres" to Central Australia. Flynn wrote, "Presently there is one minister working in an area which is half of Australia. The failure of the church to reach the outposts of the nation is a shame."[6]

The General Assembly of the Presbyterian Church, meeting at Scots Church in Collins Street, Melbourne, accepted the recommendations and appointed Flynn to be superintendent of its Australian Inland Mission. At only 31, he was responsible for a huge tract of land comprising the Northern Territory and parts of western Queensland and the Kimberley district of Western Australia. It was a significant decision for three reasons. First, the Presbyterian leaders were making policy on a national basis; secondly, they were prepared to support experimental methods; and, finally, although they were not to know it, they had appointed Flynn to his lifetime position.[7]

Flynn struck some favourable bargains with the church authorities, including the right to raise funds when and how he thought fit. This gave him the scope to forge alliances with pastoralists, industrial leaders and politicians, and to employ attention-getting fund-raising schemes without waiting for committee approvals. You have only to look at the tragic life of Henri Dunant, the founder of the Red Cross, for a case study of how an envious bureaucrat can undermine the credibility of an eloquent dreamer. Flynn kept clear of administrative hurdles.

Flynn took as his motto, "For Christ and the Continent".[8] The Australian Inland Mission assumed control of the Oodnadatta nursing post established by the Smith of Dunesk bequest – and the funds. Flynn set off to get to know his vast parish. An AIM pamphlet gives insights into Flynn's spirituality and his way of communing with outback people. He claimed that in the fringes of the populated States and further inland, there were some 200,000 men and women, mostly men. His empathy shines through:

> They are the pioneers who discover the land and reveal its riches. In their interests the AIM was established. There are all sorts of conditions of men among them – a number of average folk such as may be found anywhere; some College or University men; men who have travelled far and could not rest; others born on the land who knew and wished for no other life; some from the Old Land, well born; others again, who had no education and were unable even to sign their own name; men chivalrous and cheerful in spite of loneliness and ill-luck; some almost unapproachable because of the years spent alone; others eager for companionship of any kind; some lonely and introspective, to whom a Padre's visit meant the opportunity of discussing many well-thought out problems – often

> religious ones – by a camp fire; others who had lost heart in their work and faith in a saviour. It was these men whom the Church had upon its heart and conscience; men who thought the Church had forgotten them.[9]

Flynn knew outback people were more eager for medical help, good roads and simple friendship than they were for preachers. His vision was of what he called "the implicit Gospel", seen in bush padres who were impelled by love and compassion: "They share the lonely vigils; they hear the long pent-up story of many an exile, and give to them a new grip upon life and the things that matter. They carry with them the assurance of the Gospel of the second chance, and have persuaded many a man to make a fresh start, and to begin, this time, with God. For with it all are the Saviour's work and the companionship of Jesus Christ, which are for healing and comfort and hope."[10]

Healing, comfort, hope. This is a warmer message than is generally associated with Presbyterianism. Yet Flynn was not a glad-handing, emotional character. He had a long, serious face of the sort cartoonists ascribe to Presbyterians. His somewhat reticent spirituality, his masculine companionship, struck the right chord in the Australian bush. He had found his spiritual home.

Flynn was not, so far as the records show, as responsive to the other dreams of the interior of Australia, the Dreaming lore of the Aboriginal tribes who had lived there for thousands of years. Where Aborigines are mentioned in the early AIM documents, it is usually as outpatients treated for eye and ear infections and other common diseases. Burns were a common injury: "They feel the cold keenly, and sit close to their fires with the result that their arms and legs are sometimes burnt."[11]

Flynn started the magazine *The Inlander* in 1913 – two decades ahead of *Walkabout* magazine, founded in 1934, which claimed to have pioneered outback journalism.[12]

At the time of Flynn's ministry, white men far outnumbered white women in the outback. Flynn wanted to make it safe for white women to join their men. Comparatively few women wanted to risk pregnancy and childbirth without access to medical aid. No one wanted to see their children perish from disease. There was also a racial motive for bringing more white women to the outback: in Flynn's day, Australian opinion leaders deplored mixed-race sexual relations resulting in half-caste children. Notions about racial purity and assumptions of white superiority were widespread, but in all fairness, disapproval of the exploitation of Aboriginal girls and women also played a part.

Flynn's magazine, *The Inlander*, linked scattered communities and increased awareness in the cities of how settlers were living "back of Bourke". A born campaigner, Flynn used his publications to seek donations of funds and goods. One appeal was for books and

magazines. Flynn wrote that people in the outback "read the labels on the jam tins and then they read them again".[13]

Donors were asked to send high quality books and magazines, rather than old school books or old theological books. Weekly donations were posted from Sydney and Melbourne to about 50 outback destinations. A related service, the Mail-bag League, helped city people and outback people become penfriends.

The Inlander publicised the plight of outback families without access to hospitals and emergency medical aid. A mother described her last trip with her infant daughter:

> ….we had to wait with our sick child until a special sheep train on Thursday and it being 6 hours late we arrived in Hawker [240 km south] six hours late and the poor child died one and a half hours before Hawker was reached. Our little Mary was just 12 months old, convulsions caused her death and how I miss her no one knows.[14]

Flynn dreamed of a "mantle of safety" for bush people – a ring of nursing outposts placed so that no desperate mother would face this kind of heart-breaking delay. By 1923 he placed twenty-three trained nursing sisters for the AIM. They were resourceful, capable women, willing to put up with heat, loneliness and huge distances. A diary kept by Sister Grace Francis, who served in Birdsville in far western Queensland in the early 1920s gives a good account of what life was like for these far-flung nurses. Her entry for 12 March 1925 described a critical case:

> Mr Long who is camped 16 miles from here was admitted into the ward this afternoon suffering from advanced heart disease. He had been ill some time and was treating himself for Beri Beri but has had acute heart all the time. He died at 11 p.m. after a struggle for eight hours. I had to let him have his mattress on the ground, he just begged to have it there, as the wire mattress was too soft for him. These poor old bushmen are so used to the ground for sleeping that they are uncomfortable on a bed. He managed to sign his will before he died. It was a happy release for him from the pain and breathlessness.[15]

Flynn had by now turned his attention to new projects. Bush nurses could provide one phase of the "mantle of safety" but advances in transport and technology suggested other solutions. During World War I, Flynn received a letter from a young airman, Lt. John Clifford Peel, who outlined a scheme to combine air transport with medical aid for the bush. Peel died in the war but the seeds of the flying doctor scheme had been sown in Flynn's mind.[16] He was not a man to give up.

In the 1920s radio transmitters were huge things requiring technically skilled operators. Flynn dreamed of cheap, reliable, easy-to-operate sets that could both receive and transmit. In 1925 Flynn and a colleague, George Towns, set off with gear mounted on a vehicle to test the new equipment in outposts in northern South Australia and far western Queensland. One speech message from Cordillo Downs

carried about 300 miles. Apart from that, the tour was what Idriess calls a "successful failure" with just a few morse messages transmitted.

Sister Francis of Birdsville was more impressed by a concert from Melbourne than the communication history being made before her eyes:

> *August 11, 1925*
> Mr Flynn and Mr Towns drove in about 3 p.m. We were surprised to see them.
> *13 August*
> After tea Lyle was christened, a nice little service, very short but we all enjoyed it thoroughly. After this we all retired to the store room to hear a concert in Melbourne, we gathered a few of the neighbours, and Mr Towns gave us a "listening in" treat. The concert ended in the National Anthem, which also for the moment turned the old store room into a concert hall.
> *14 August*
> Both men busy today…After tea Mr Towns was able after a lot of trouble to locate Barcaldine in the air, he was trying for Brisbane but failed, later in the evening he was able to get a man at Adelaide and gave 3 wires from here... Mr Towns and Mr Flynn were very much happier for having got this much done and no doubt it is a wonderful thing.[17]

Wonderful indeed when you realise that they generated electricity for the transmission by jacking up the back wheel of the car as a pulley drive. Soon Flynn secured backing from Amalgamated Wireless Australasia for a young Adelaide man, Alfred Traeger, who invented a low cost pedal driven generator. This made two-way high frequency communication feasible throughout remote Australia. By 1929 it was a reality in dozens of outback homes and cattle stations.

Not everyone shared Flynn's priorities. Some members of his Board criticised the time he gave to radio trials, which they did not see as missionary work. Flynn had shrewd tactics for dodging his critics. One was to take off on patrol: he could spend three-quarters of the year away from his head office at York Street, Sydney. Another was delay. He kept his papers in a muddle and often left correspondence unanswered. This gave him an opportunity to talk people round face to face, a tactic that nearly always worked for him. Matters were deferred and deferred until the majority came round to Flynn's point of view.[18]

Unlike Henri Dunant, Flynn did not have a lifetime opponent at head office. Quite the reverse. The secretary of the AIM, Jean Baird, a quiet woman who spent decades in the same job, was devoted to him, addressing him in later years as "the Doctor". (Flynn had no medical qualifications but he did eventually have an honorary doctorate of divinity from McGill University.) When Flynn was 51, he astonished his friends and colleagues by marrying Jean Baird.

Flynn won influential supporters for an airborne medical service. His supposedly accidental meetings with men like Sir Stanley Kidman and Qantas pioneer Hudson Fysh became a legend. A particularly crucial supporter was Mr H.V. McKay, of the Harvester company,

whose death meant a huge windfall for the AIM – McKay left two thousand pounds, a fortune at the time, towards the establishment of a flying doctor scheme. The Woolbrokers' Association made another substantial donation of one thousand pounds. In 1926 Flynn sidestepped his Board and again went directly to the General Assembly of the Presbyterian Church. The Assembly passed a resolution authorising the AIM to *"take all necessary steps towards the consummation of the ideal."* [my italics]

This was a ringing endorsement of Flynn's vision, achievements and leadership style. However, without the McKay bequest, Flynn would never have been given such a free hand.

Flynn was a born propagandist. "He would buttonhole a man, any man who would listen – and lay his plans before him with an earnestness which made his companion feel the entire undertaking depended on his support. Then he would move on and begin it all again with the next person he happened to run against… He could capture the mind with a challenging concept and the heart with an appeal to deep human sympathies."[19]

Cloncurry, the town that spawned the airline Qantas, was a natural centre for the AIM's most famous venture. As the radiating circles showed, a plane could fly from western Queensland as far west as Brunette Downs in the Northern Territory, north to the Gulf country, and south to the border country where New South Wales, South Australia and Queensland meet. The first flight of the Aerial Medical Service, with pilot Arthur Affleck and Dr Kevin St Vincent Welsh took place on 28 May 1928. In the first year the flying doctor flew twenty thousand miles, saved ten lives, saw two hundred and fifty patients, and held numerous consultations with other doctors and nursing staff..[20]

The flying doctors became part of the national psyche. Flynn became Flynn of the Inland." Idriess' book, first published in 1932, was reprinted again and again – 25 times by January 1948. There were five reprintings in the first year alone. People slogging through the Depression found inspiration in Flynn's story. Idriess realised that Flynn, the dreamer in the city-slicker waistcoat, was an outback hero himself.

The Depression nearly brought aerial medicine to a halt. It was only thanks to non-stop publicity, energetic fundraising and some drastic administrative changes that it survived. In 1933 the AIM's Aerial Medical service was transferred to the National Aerial Medical Service of Australia, with regional boards in each State. This freed the Presbyterian Church from direct financial responsibility and was the beginning of greater government support. Flynn arranged for the flying doctor to address members of federal parliament.

The Flying Doctor Service was a pace-setter for aerial medical services elsewhere. In 1942 the Australian Aero Medical Service

became the Flying Doctor Service and in 1955 added the word "Royal" to its title. A national body, it now operates 24 hours a day, 365 days of the year, from 21 bases across Australia. There are 40 aircraft and more than 400 staff serving nearly 200,000 patients each year. There are about 60 aerial evacuations per day. A child born with a heart defect on a remote island in the Torres Strait can be receiving open heart surgery in Brisbane within 36 hours.[21]

To return to Flynn. In 1939 he served as General Moderator of the Presbyterian Church in Australia, the highest post in a denomination without bishops. He was awarded an MBE. Late in Flynn's life he was vehemently criticised by an influential lay Presbyterian from Adelaide, Dr Charles Duguid. Four years younger than Flynn, Duguid had a medical degree from Glasgow University and post-graduate qualifications in surgery. By the 1930s he had become a passionate advocate for the Aborigines of the inland, and for the growing population of mixed Aboriginal and white descent. In one of his books, *Doctor Goes Walkabout*, Duguid recounts a conversation with an AIM padre in Alice Springs in the 1934. The missionary asked Duguid, "I believe you are interested in the niggers?" This provoked instant fury in the Scottish doctor: "To hear this from the local leader of the mission maintained by my own church was staggering."[22] Flynn himself had deplored racist references such as "niggers" in *The Inlander* as early as 1915 and would been as disgusted as Duguid to hear them from a colleague. However, as Duguid was only too aware, any criticism of the AIM would damage Flynn personally. (It is easy to forget how uncritically such derogatory terms were once used. In the 1913 novel *Norah of Billabong*, by Mary Grant Bruce, once found in every school library, Billy the black boy is described as "a lazy little nigger".)[23]

A Methodist missionary told Duguid: "My heart bleeds for the native people, but if I interfered on their behalf, the cattle stations would be closed to me." Making formal enquiries later of the Adelaide Director of the Australian Inland Mission, Duguid found, "He was utterly frank. 'The AIM is only for white people,' he told us."[24]

The atrocities of the border were not all in the distant past. Duguid himself examined an Aboriginal man who had been shackled in neck irons on his way to a police cell. He heard stories of shootings and poisonings, of Aboriginal families forced off their land at gunpoint. He wrote of one such incident where all the dogs were shot, the cooking vessels ruined, the property destroyed, while the men were beaten and marched off in chains. This, according to Duguid, happened in 1945.[25] He noted ironically that "the station owner and the policeman had conveniently forgotten" that Aboriginal people had a legal right to access to water and game.

Charles Duguid was scornful of the myth that Aborigines were a "dying race". He fumed about white men who exploited Aboriginal

women and girls and fathered children for whom they took no responsibility. He determined to set up a mission near the Musgrave Ranges in the far north of South Australia to buffer Aboriginal people against the growing influence of cattle grazers. For funds, he looked to the Smith of Dunesk Mission bequest which dated from the mid nineteenth century. Mrs Henrietta Smith, a doctor's widow from Lasswade, Scotland, originally wished to make a bequest for promoting Christian work among Aborigines in South Australia.[26] Church authorities warned her to avoid specific wording about Aborigines because the race was likely to die out. Mrs Smith signed a document drawn up by Church lawyers that referred to "any Christian work in South Australia." She died in 1871 in the belief that her wishes would be respected. They were not. Instead, the Smith of Dunesk Mission was formed in the late 1890s to minister to Scottish settlers in remote parts of the State. This mission founded the nursing station at Oodnadatta, inspiring John Flynn to spread a "mantle of safety" across the interior of the entire continent. The fancy legal footwork was no fault of John Flynn's. But the AIM was a major beneficiary of the fund for 40 years.

Duguid detracted from the greatness of Flynn's legend when he accused the Australian Inland Mission of racism. According to Duguid, "The Alice Springs Hospital was opened in 1939, but it was not until 1958 that the executive of the AIM allowed its staff to treat Aborigines."[27] Most AIM nursing outposts accepted Aborigines as outpatients from the earliest days, so perhaps Duguid is referring to in-patient care.

Some early publications from the AIM in Flynn's time show an offhand attitude towards Aborigines. For instance, the pamphlet, "The Story of the Australian Inland Mission" refers to "a black boy" taken by a padre on camel back as "an intermediary with the wild tribes through whose areas the Padre might be travelling."[28] It is impossible to read that sentence now without wondering about the black boy. Who was he? Was he a volunteer or a conscript? Was he paid? Where did he come from? What languages did he speak? What did he think about the "intermediary" role he was expected to play?

Duguid's criticisms need to be seen in perspective. If he had gone to the source material he would have found that Flynn's *A Call to the Church* actually listed the agenda items considered by the General Assembly in September 1912. The first item was "The duty of the Presbyterian Church of Australia towards the white population of the Northern Territory."[29] In the light of *Bringing Them Home* and the attitudes of our own day, the pity is that the churches did not confine their evangelism to their own lost sheep. Charles Duguid himself, before being radicalised in his middle age, voted in favour of policies that removed half-caste Torres Strait Islander children from their mothers.[30]

Flynn devoted an issue of *The Inlander* to Aborigines in 1915. He pointed out that the AIM was not the part of the church with responsibility for Aboriginal people, but he described the degradation of some Aboriginal people, particularly destitute women, as "a blot on Australia". He was shocked by the sight of young Aboriginal men in neck chains. He wrote approvingly of Aboriginal stockmen who received full wages, and of a black preacher who handled racist abuse with dignity. If he thought of whites as "the superior race", he also had humane instincts and did not feel the community should turn its back on blatant inequalities.

Since the late 1970s discrimination has been outlawed throughout Australia. Changed attitudes make it hard for us to see Flynn in the context of an earlier time. He was not alone in his racist assumptions. The Methodist missionary was probably right when he told Duguid that any missionary who put the Aborigines first would have had the cattle stations closed to him.

Duguid's accounts throw some unexpected light on the long fireside chats that Flynn held with early inland settlers. When Flynn writes of "the long pent-up story of many an exile", and "the Gospel of the second chance", perhaps he is hinting at confessions from men who took part in shootings or poisonings. It is impossible to be sure.

When Flynn died in 1951, his ashes were placed under a giant round stone at the foot of Mount Gillen near Alice Springs. In 1997 the stone was removed, at the request of the Arente and Kaytetye Aboriginal people, who regard the Devil's Marbles (of which the stone was one) as the eggs of the Great Serpent. After negotiations, it was replaced by another stone. The Reverent Maurie Lund of Alice Springs said, "We can't use any old stone. We're looking for something similar, something local and something the local Aborigines are happy with."[31] This event, symptomatic of the challenge to Flynn's reputation in recent years, is part of a continuing story of contested values.

John Flynn's achievement as a leader was to open the centre of Australia, first to regional health services, secondly to radio communication, and finally to aerial medical services. Flynn discerned hungry souls in the taciturn settlers of the outback, but he reached them through medical supplies and manly dialogue rather than proselytising. He created the perfect job for his own talents and played to his strengths. He could tell a compelling story and to a large degree he embodied it. He knew how to find powerful allies and how to overcome the qualms of the less imaginative. He was sustained by his determination to spread the "mantle of safety" throughout remote Australia. He held to his dream for decades and saw it fulfilled. Despite his blind spots he was a leader with a national vision.

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1. Vivienne Carroll, Ian Frames
2. Keith Williams, Sanghee Park, Mark Bradley
3. Anne Henderson, Geri Ettinger
4. Ross Woollett, Joyce Yong
5. Peter Gardiner
6. Robin Batterham addresses The Sydney Institute
7. Peter van Onselen and guest
8. Mary Lynne Koloff, Anthony Hibbert

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Dorothy Rowe

Dorothy Rowe, writer and psychologist and author of *Friends and Enemies: Our Need to Love and Hate* (HarperCollins), believes the desire for friendship is fundamental to everyone – and that without friendship no amount of wealth, fame, power or achievement will bring us happiness. However, if humans crave good relationships, they also need bad ones. In imagining we have enemies we at least have the comfort of knowing that someone, somewhere, is thinking of us. To elaborate on this and much more, Dorothy Rowe addressed The Sydney Institute on Monday 26 February 2001.

PEOPLE AND *NATIONS – THEIR NEED TO LOVE AND HATE*

Dorothy Rowe

Everything that exists is an ever changing, seamless whole. Everything is connected to everything else. Yet this is not the way human beings see themselves and their world. We divide this seamless whole into chunks in order to create a picture of ourselves and the world. Sometimes these divisions bear some similarity to what actually exists, and sometimes the divisions are contrary to our actual experience. This is the case when we divide ourselves into mind and body, or our experience of being alive into cognition and emotion. These divisions are false. Each of us operates as one whole unit. Our mind and body are one, and it is impossible to separate our thoughts from our emotions.

Even that unit which we call "myself", "I", "me" is not a clear, distinct being, separate from the rest of our world. We think of our skin as encasing our body and marking its boundary, but, were we able to see more clearly, our skin would appear as permeable and our body as a clump of nuclear particles which is in constant intercourse with everything else around it.

In much the same way we see ourselves as distinct, private individuals, each of us a person distinct from other people. Yet what we experience as "myself" would not exist were it not for other people. Psychologists have always divided their professional discourse into social and individual psychology, even though this division is quite false. We cannot separate ourselves from other people.

Newborn babies who are fed and kept warm but never cuddled and talked to grow grey and die, a condition known as anaclitic depression. A baby who survives a lack of personal attention but who fails to form a bond with a mothering person grows up not understanding that around him there are both objects and people. People have thoughts, feelings, needs and wishes, while objects do not. Someone who does not know this treats people as objects.

Consequently such a person inflicts pain with indifference, and does not develop a conscience, that is, that way of thinking which enables us to form a law-abiding society. Babies who never form a bond with a mothering person often grow up to be criminals, or to be diagnosed as suffering from a psychopathic personality disorder, but equally such babies can grow up to entrepreneurs, or lawyers, or politicians, or simply husbands and fathers, wives and mothers who cause their families endless pain and confusion.

We need other people so that we develop as a person with a conscience and the ability to empathise with others. We also need other people to sustain us in our daily lives. If we live completely alone we become eccentric and strange. We all need friends and we all need to learn the skills of friendship. These skills are both practical and personal. We need to learn the simple skills, such as how to greet someone in a friendly manner, but we also need to develop the many virtues of friendship – affection, trust, reliability, generosity, kindness, understanding, tolerance. To have a good friend you need to be a good friend.

However, whenever we approach another person in friendship we make ourselves vulnerable to the greatest danger that can befall us, that is, the threat of being annihilated as a person. We might fear death, but we can temper our fear with the belief that when we die some important part of us will continue on, be it our soul, or spirit, or simply that our friends will remember us. When we are threatened with annihilation as a person we feel that we are shattering, crumbling, disappearing. We feel that we will vanish like a puff of smoke in the wind, or like a raindrop into the ocean. Our very existence will be wiped from history.

This terrible experience can arise in the simplest of circumstances. My friend Joy gave me an example of this. Joy is a very friendly person and has always been interested in shopping, so when she was phoned by a marketing researcher, instead of making an excuse, she readily agreed to be interviewed. The researcher, a woman, needed some background information about Joy and inquired about her age group. Was she in the 20 to 35 group? No. The 35 to 50 group? No. The 50 to 65 group? No. Over 65? Yes. The researcher said, “In that case we don’t need you”, and put the phone down. Joy was not simply shocked at the woman’s rudeness. She felt physically weak and diminished to the point of disappearing. Her whole life, all her work, everything she had achieved had been scorned and rejected and she herself was at the point of shattering and disappearing.

We feel ourselves threatened with annihilation whenever we discover that we have made a serious error of judgement. Joy had thought that, with her extensive experience of family life, she could make a contribution to a discussion about shopping, and the researcher showed her that she was wrong.

Everyone has made more serious errors of judgement than that. We might have thought that we were going to spend the rest of our lives with one person, and then that person abandoned us; or that our career path was firmly mapped, and then it disappeared; or that if we were good no disaster could befall us, and then we discovered that no amount of goodness prevents disaster.

If we can bear to remember those occasions when we made a serious error of judgement we can recall the terror we felt as we found ourselves falling apart, shattering, even disappearing. We can also recall how hard we had to work to hold ourselves together.

In our attempts to hold ourselves together we can resort to some desperate defences which lead other people to regard us as being bad or mad. We might turn against those people whom we see as the authors of our disaster and seek to destroy them in war or in an act of murder. Or we might turn against ourselves and blame ourselves for the disaster, and thus changing the sadness of our loss into the prison of depression, which is one of the most popular defences against annihilation. Indeed, all those behaviours which psychiatrists call mental illnesses can be understood as defences against annihilation. Everything we do, whether in desperation or in the ordinary course of daily life is aimed in part at defending ourselves against annihilation.

How does this sense of being a person and the fear of annihilation arise? To understand this we need to understand how we operated as people.

The ancient Greek philosopher Epicatus said, "It is not things in themselves that trouble us but our opinion of things." In other words, what determines our behaviour is not what happens to us but how we interpret what happens to us. Today neuroscientists have shown that Epicatus was right. Our physiological make-up does not allow us to see things in themselves. What we see are what Epicatus called our opinions, that is, our ideas, attitudes, perceptions, all of which are constructions which we have made.

Newborn babies do not simply open their eyes and see the world. They have to learn to see, and how they do this depends on their experience of the environment into which they were born. Babies born into rectangular rooms learn to see space differently from babies born into round rooms, and people who grow up in mountain valleys see depth and distance differently from people who grow up on plains. This learning to perceive applies to every aspect of our experience. We come into the world with certain potentialities, but whether and how these potentialities become actualities depends on our experience of our environment. It is impossible to separate the effects of nature and nurture, and to think that we can do so is to delude ourselves.

Neuroscientists can now tell us something of what happens to our brain when we learn. Every act of learning is accompanied by the

setting up of connections between the neurones in our brain. What the brain does has been summarised by the scientists Terence Picton and Donald Suss. In "Neurobiology of Conscious Experience" (*Current Opinion in Neurobiology* 4 pg 256-65), they wrote, "The brain forms and maintains a model of the world and itself within that world. The model can be used to explain past events and predict the future." Since no two people ever have the same experience no two brains ever have the same pattern of connections between neurones.

The neuroscientist Susan Greenfield calls this setting up of connections in the brain "the personalization of the brain." As a psychologist I talk about meaning structure. What we call "I", "me", "myself" is a structure made up of all the interpretations or meanings which we have created. You are your meaning structure. Your meaning structure is you. Your meaning structure is not just a collection of ideas but a complex structure where every part is connected to every other part so as to form its own idiosyncratic logic. The pattern of neural connections in the brain seems to be the neural substrate of our meaning structure. Whether we think in terms of neurology or meaning, it is clear that no two people see themselves and their world in the same way.

This is the reason why people find it so hard to get along together. We are not born with an aggressive gene, nor do our hormones, nor our id, nor the planets millions of miles away propel us into war and conflict. We fail to get along together because we each see things in our own individual way, and we do not understand this and so make allowances for one another.

If we understood that everything we perceive and know is an approximation or a theory about what is actually going on we would understand what the experience of falling apart actually is and so not be afraid of it. To live safely in the world we need to construct theories about the world which are as close an approximation to the world as we can make them. Your theory about when it is safe to cross the road needs to be a good theory. We have developed techniques for creating good theories, that is, the techniques of scientific method, but these ways of thinking about our experience and checking our experiences by repetition and by discussion with other people are not used extensively by all people. Instead, most people prefer to construct fantasies, to regard these fantasies as absolute truths which exist outside time and place and which are known only to certain select people, to refuse to subject their fantasies to scientific method, and to react aggressively to anyone who questions their beliefs or who supports a belief whose mere existence questions the truth of the dearly held fantasy. The conflict between the Israelis and the Palestinians is based on the Israelis' belief that God gave the land of Palestine to them for their exclusive use.

If we understand that the experience of falling apart is simply a necessary process whenever we discover that we have made a serious error of judgement, we could abandon theories about mental illness and see disturbed behaviour as a desperate defence which could be rendered unnecessary by providing the person with the kind of support and safety which would enable him to go through the difficult period of dismantling an integral part of his meaning structure and constructing a better approximation of what was actually going on. We could also understand why in ordinary circumstances other people behave so peculiarly. In short, we could abandon that old saying, "All the world's mad except me and thee, and even thee's a little strange."

However, many people show great resistance to this kind of understanding. As a psychologist my work has always been concerned with finding effective methods for eliciting another person's meaning structure and seeing how the idiosyncratic logic within that meaning structure led inevitably to a certain behaviour. In my clinical work I was often required to provide a report on a person who had been found guilty of sexually abusing children and who failed to see that he had done anything wrong. In my report I would try to show the connections between the paedophile's experiences in his own childhood and his abusive behaviour as an adult. Whenever I lectured on this topic I could be sure that at least one person in the audience would accuse me of providing an excuse for the paedophile's behaviour and of failing to condemn sexual abuse. Yet, had I in another capacity been providing a description of the events which led to a person developing cancer, no one in my audience would accuse me of being on the side of cancer. My reply to my accuser that an explanation is not an excuse never satisfied this person because his need to be judgemental over-rode any desire to think logically and see another person's behaviour in terms of how that person saw himself and his world.

It is much easier to judge others than to think about our own responsibilities. There is very little which happens to us over which we have control, but we always have control over how we interpret what happens to us. A paedophile might not have had any control over the adults who abused him when he was a child, but he is responsible for deciding to interpret his sexual abuse as an action which the child he was abusing actually enjoyed.

Virtually all of human suffering is a result of what we do to one another and to ourselves. If we understood how it is that we operate as meaning-creating creatures we would be able to devise ways of living which reduced our suffering to a minimal. Yet this way of understanding ourselves is never taught in schools. There are very powerful reasons for this.

As a baby and a toddler we all knew that everyone had their own way of seeing things. This was obvious from our experience. There we

would be, left to our own devices for a while in the kitchen where we found a pot of something which was extremely interesting. As a scientist we explored its interesting sticky texture, and as an artist we admired its yellow transparency, and as both artist and scientist we explored its possibilities over the kitchen floor and over our own body. Then our mother entered the room and immediately we discovered that she saw the situation differently.

A few children have the fortunate experience of being born to parents who are prepared to accept that their children have quite rightly their own point of view, but most of us had parents who made very clear to us that if we thought differently from them we were stupid, immature, even wicked. We learned to mistrust our own thoughts and feelings and to feel that there was something wrong with us if we saw thing differently from those people who were in authority over us.

Any child who enters the education system confident in his or her own view of the world is immediately seen by most of his teachers as a threat. Any teacher who appreciates a child who is an original thinker will be caught in a painful conflict between the needs of such a child and the demands of the educational system that teachers must force children to conform to this system. In society generally people who think for themselves are regarded as trouble makers by the State and the Church. Much in society is directed at stopping people from thinking. Here in Australia it is considered better that people spend their time gambling, even though extensive gambling is very deleterious to the economy of a country.

Understanding that each of us has our own individual ways of seeing things means that no one can claim to be in possession of some absolute truth. There may be absolute truths somewhere, but, constructed as we are, we can never be certain that we have encountered one. Yet the power structures of society are built on claims to absolute truths. It is not just dictators, politicians and church leaders who want to make such a claim. Psychiatrists and psychologists make similar claims which take the form of mechanical models of a human being which only the expert can understand.

There was a fine example of this on BBC Radio 4 *Women's Hour* recently. The presenter, Jenny Murray, was discussing with a psychologist and a psychiatrist a newly discovered disorder called nocturnal eating disorder. If on occasion you wake up during the night, find that you cannot go straight back to sleep and so decide to get up, go into the kitchen and make a snack or a hot drink, you are suffering from nocturnal eating disorder. The psychiatrist explained the cause of this disorder in terms of some as yet undiscovered hormonal change, while the psychologist explained the disorder in terms of the failure of the superego to restrain the impulses of the id. Not one these three intelligent, educated people talked in terms of what actually happens to

us, which is that we wake up in the night filled with the nameless dread that comes when our meaning structure is under threat, something which can happen when the controls we use during the day dissolve in sleep. To ward off the threat we do something ordinary and comforting as getting something to eat. However, if you know just what this nameless dread is you can deal with it quickly and get a good night's sleep.

Over the last 30 years there has been an increase in the number of people who understand how we each have our own way of seeing things and who have been brave enough to put this understanding into practice. Even though the easiest way to bring up children is to terrorise them into obedience, an increasing number of parents have taken on the hard work of raising children by taking seriously the child's individual point of view. At the same time an increasing number of people are recognising that conflict is never ending if one side simply defeats the other side, and that compromise and reconciliation are essential if conflict is to be brought to an end. However, such parents and conciliators face constant criticism and little support. Such parents are surrounded by observers who make comments along the lines of, "If that was my child I'd give him a good hiding," while conciliators are scorned by the very people they are trying to help.

In an effort to hasten the end of the Troubles in Northern Ireland a group of women from both sides of the sectarian divide came together to form a political party, the Women's Alliance. It was very difficult for these women to come together because Catholics and Protestants shared no social life and, if forced by circumstances to converse, dealt with one another at best in icy politeness. Dialogue in Northern Ireland was conducted by each side shouting slogans. The Women's Alliance drew up a set of rules to prevent polemic and create proper conversation. No one was allowed just to make a statement of position. Each person had to present her reasons for that position. If one woman made a statement and presented her reasons a woman who held opposing views would then present her views along with her reasons for that view.

For instance, if a Protestant woman spoke of the necessity, as she saw it, of the Union Jack to be flown over police stations and government buildings she would then have to describe what the Union Jack meant to her. She would speak of loyalty and continuity, and of the pride she took in being British. Then a Catholic woman would be asked to describe what the Union Jack meant to her. She would talk of being alienated from her own country, of being made to feel a second class citizen, and of her fear of the British forces of law and order. This mutual exploration of meaning structures allowed all the women present to glimpse the lived experience of people who shared a country but who knew little of each other. The work of the Women's Alliance not only expanded the experience of many people but also made a

significant contribution to what is now known of effective methods of conciliation and reconciliation.

But did this mean that the Women's Alliance became a significant party in the Northern Ireland Assembly? No. The voters stuck to their political prejudices and elected the same old bigoted men who had been the leaders in the Troubles.

These bigoted old men, like a great many men and women, refuse to contemplate any kind of reconciliation because they see forgiveness as a weakness and implacable hatred as a strength. At the same time other people, notably church leaders, demand that we forgive our enemies. Both groups of people fail to understand just what forgiveness is. This failure arises out of the false division we make of cognition and emotion. Doing this we fail to recognise that forgiveness is an emotion and that emotions are a particular kind of interpretation which we create. There are some interpretations which we arrive at after some thought and some interpretations which we arrive at immediately without any thought but with a sense of absolute truth. This second kind of interpretation is what we call an emotion or feeling. Of course we can mislabel our emotions and lie to ourselves about what we feel, but these are acts of stupidity which only damage ourselves. Our emotions are interpretations which we cannot will into being because we believe that we ought to do so. You cannot force yourself to love someone or forgive someone when in fact you do not love or forgive that person. All we can choose to do is to act in a loving or forgiving way.

The reason that people will not change their beliefs even when it would be socially and economically advantageous for them to do so is that to do so would be a threat to their meaning structure. When we have built our whole sense of identity upon a certain set of ideas it can seem to us that to change our ideas would be to annihilate us as a person. The Australia I grew up in was a society of strong prejudices. That society was divided into Catholic and Protestant and the divide was as strong as it was in Northern Ireland. Foreigners were scorned and abhorred, while the Aboriginal people were not seen as human beings. It is not surprising that current studies of racial attitudes and anti-aboriginal feeling show that these prejudices are most prevalent in my generation.

Such prejudices are based on dividing the seamless whole of all that exists into rigid and absolute divisions. Such divisions prevent us from recognising that all human beings are very much the same, not just genetically, but in our needs, desires, hopes and fears. If we could see that the divisions we create are ideas that exist in our head and not in reality, and that as we created these ideas we are free to change them, then it would be possible for us to diminish our suffering simply by coming to tolerate one another.

1. *Chris Eichbaum, Mike Steketee, Priscilla Williams*
2. *Andy Small, Jaclyn Webber*
3. *Barry O'Farrell, Simone Holzappel*
4. *Bridget Gay, Greg Lazarus*
5. *Gaile Tengiford, Julie Scotti*
6. *Natasha Holmes*
7. *Adam Cagliarini, Kerry Wood, Jacqui Dwyer*
8. *Peter Harris*
9. *Jill Wellington*
10. *Fred Tritsch*
11. *Geoffrey Blooman*
12. *Shann Turnbull, Ray Wagner*

Photo – David Karonidis

Anne Burns

The use of the English language has come to dominate global forums, especially with the leading role played by the USA in the IT industry and world media through satellite and cable television. But what does this mean for Australia's place in the world? Is it a selling advantage or a crutch we could do without? To discuss the issues raised by global English, Anne Burns, senior lecturer and Head of the Division of Linguistics and Psychology at Macquarie University, addressed The Sydney Institute on Wednesday 7 March 2001. Anne Burns is also the co-editor of *Analysing English in a Global Context*, an Open University project distributed in Australia by Macmillan.

ENGLISH AS A *GLOBAL LANGUAGE – OPPORTUNITY OR THREAT?*

Anne Burns

It's a pleasure to address The Sydney Institute this evening on the subject of the globalisation of English and I'd like to begin by thanking Gerard and Anne Henderson for inviting me. I am one of six academics[1] from Macquarie University and The Open University in the UK who collaborated on the development of a new course module at Master's level called Teaching English Worldwide. My recently co-edited book with Caroline Coffin *Analysing English as a Global Language* is one of the three readers published by Routledge for this course. *English Language Teaching in its Social Context* (Candlin & Mercer) and *Innovation in English Language Teaching* (Hall & Hewings) are the two companion volumes. Our major goal in compiling these three volumes was to position English language teaching (ELT) in a broad range of institutional, geographic and cultural contexts and to debate the teaching of English – now a major industry worldwide – from the perspective of the reach of the English language globally.

Analysing English in its Global Context has a dual purpose: first, to overview the nature of and reasons for the rapid spread of English, and the impact of this spread on other languages and cultures; and second, to introduce readers to linguistic tools which can be used for the analysis of language variation, particularly as it manifests itself in the educational context. My focus in this presentation will be on the first area, but before I leave the second, I would like to note briefly that the discourse-based and functional approach that we have taken to language analysis is one that draws substantially on social-semiotic approaches, specifically systemic functional linguistics – a theoretical framework that looks at language in social use. This approach is largely based on the work of Emeritus Professor Michael Halliday (e.g. Halliday, 1994), Professor of Linguistics at the University of Sydney in the 1970s and his colleagues. It has made its impact steadily over the last two decades as a major underpinning for educational developments

in language and literacy pedagogy in Australia. It is acknowledged increasingly internationally, thus putting Australian linguistic work firmly on the English language educational map.

A world English?

Perhaps the first question to pose is this: How was it that the language of only a proportion of the population (and I say this advisedly, being a native of Wales!) from a small and isolated island off the north-west coast of Europe became a modern-day international *lingua franca*?

Braj Kachru and David Crystal, two of the leading commentators, refer to two major "diasporas" (Kachru & Nelson, page 10[2]) leading to global spread. The first, beginning from the 16th century during the reign of Elizabeth I, involved large-scale migrations to North America, New Zealand and Australia. This increased the number of mother-tongue speakers worldwide from an estimated 5-7 million to 250 million by the beginning of the reign of Elizabeth II (Crystal, 1995:92). The second, beginning in the late 18th century and culminating in the 19th, arose from the expansion of colonial power, particularly into Africa, India and the South Pacific. This coupled with the emerging economic power of Britain in the 19th century and the United States in the 20th century ensured the present-day status of English. Estimating the number of speakers worldwide is a very difficult exercise, but recent attempts by British linguists, David Crystal and David Graddol, indicate that there could be up to 1.2-1.5 billion speakers of English worldwide (almost a quarter of the world's population) and this figure is increasing (Crystal, 1997: 4-5).

Now as English continues to spread, it is becoming common amongst linguists to hear the term "World Englishes" (indeed there is now even a journal entitled *World Englishes*). Why the plurality and what does this term imply? One interpretation relates to the different ways in which English has been acquired, and is now used globally. Kachru (1985) speaks of three circles:

- The inner circle – "the old-variety English-using countries where English is the first or dominant language". (for example, the USA/UK with 320-380 million speakers)
- The outer circle – "where English has a long history of institutionalized functions and standing". (for example, India/Singapore with 130-300 million speakers)
- The expanding circle – where "English has various roles and is widely studied, but for more specific purposes than in the outer circle". (for example, China/Russia with 100-1000 million speakers) (from Kachru and Nelson: 13, figures from Crystal, 1995: 107)

Note that first language speakers of English will soon form a minority group.

Another implication of the term, World Englishes is the recognition of linguistic diversity. As it has been transported to new destinations, English has evolved in many different varieties – the contrasts among British, American, Canadian, Australian and New Zealand English are a classic case – and dialects – the differences in accent and grammar found between Cockney and Glaswegian English, for example. Linguists working from a sociolinguistic perspective are interested in analysing and describing these differences, and identifying the historical, linguistic, political, economic and social factors which have caused them

The concept of World Englishes also highlights a gradual shift of focus away from the traditional centres of British and American English; it recognises that there are multiple locations and users. Of course, this change in world demographics brings into question the role and importance of the "native speaker" of English. Is being a monolingual speaker of English to one's advantage at a time when the majority of users of the language in a globalised world are bilingual or multilingual? Are native speaker-like norms a realistic achievement for other users and learners of English? Should native speakers take greater responsibility to develop their own competence in communicating with those who are multilingual users of English?

The decline in learning other languages by native English speakers is unlikely to be to their advantage in a globalised world where other people move easily between their own languages and English. Monolingualism can easily come to be seen as an economic liability in competitive multinational commercial situations where bilingualism or even trilingualism are regarded as essential competencies. Nor should native speakers assume they will be the most intelligible in these contexts. Recent research by Larry Smith (1992) found that amongst speakers of nine "national varieties of English" (China, India, Indonesia, Japan, Papua New Guinea, the Phillipines, Taiwan, the UK and the USA) the native speakers were not found to be the most easily understood or the best able themselves to understand different varieties of English.

The future of English?

All this raises the issue of whether we are now moving towards such a thing as "International English"? Can we think in future of a universal standard of English, mutually used by English speakers in different locations, or are we destined to fragment in the way Henry Sweet, the British "Professor Higgins" of the late 19th century, suggested in 1887. Speaking, at the time, of English 100 years hence he said:

> By that time England, America and Australia will be speaking mutually unintelligible languages, owing to their independent changes of pronunciation. (Sweet, 1887, cited in Crystal, 1995: 112)

Crystal (page 54) points to competing tensions surrounding the emergence of an international standard. The first is the drive for intelligibility – in a global world where hundreds of thousands of people communicate daily through international travel, satellite broadcasting, the internet and a myriad of other institutional and political networks, the need for a common basis of understanding is unstoppable. But if intelligibility were the main criterion, we would long ago have seen the consolidation of groups of speakers who use similar varieties (for example, Swedish, Norwegian and Danish) within a common language "family". This clearly is not the case; Crystal illustrates the point:

> at the beginning of the 1990s, the populations of Croatia, Bosnia and Serbia would all be described as speaking varieties of Serbo-Croatian. Today, the situation has polarized…[with] efforts being made to maximize the regional differences between them. (page 54)

Australians do not wish to sound like New Zealanders and New Zealanders do not wish to be mistaken for Americans. The need for identity pulls against the need for intelligibility and the signs are that the desire for national and regional identity is increasing. "Colourful" vocabulary (reflecting our flora, fauna and cultural features) and the rising intonations of Australian English are a manifestation of wanting to reflect our own national identity and establish our independence from our British antecedents. Peter Beattie recently said on the Nine Network's *Sunday* program just before the Queensland State Election: "They (referring to the Liberal party) skulled around like crabs in a mangrove." Similarly, Bob Katter straight after the Queensland election: "If they want to continue on with these policies then they'll be as popular as a brown snake in a sleeping bag." I can't imagine expressions like these being used by British politicians on a current affairs program!

With so many bi- and multilingual speakers using English in multilingual situations, the future is likely to see an increasing "messiness". New "hybrid" forms are now common where English mixes with other mother-tongue expressions and structures, ranging from something that would be recognisable as "standard" English, to a purely local form, to anything in between. Within less than half a minute of a Malaysian English conversation (Crystal, page 55-56) we can get the following:

Standard colloquial English

Might as well go shopping a bit, at least.

Hybrid

No chance to ronda otherwise (Malay "loaf")

Colloquial Malay

Betel juga. ("True also")

At a recent conference I attended, a colleague reported that in Singapore, a hamburger chain advertises "Mr Kiasi" (aka Ronald

McDonald?) together with the slogan "Everything must have already", an expression completely meaningful to a speaker of Singaporean English. Consider also other kinds of hybrids. Men and women from different linguistic backgrounds become partners and use the English they learned at school as their *lingua franca*. What form of English do their children learn? Or, English emerges as a common language in the halls of commerce and corridors of power in multinational settings, such as in the European Union in Brussels. What are the patterns of English, taken from Greek, French, German and Italian, that emerge in the new "Euro-English"?

Language diversity, hybridity, and even "chaos" are intricately bound up with questions of human behaviour and identity. Crystal (p57-58) suggests that whatever an International World English may eventually be like (if such a thing ever exists), the ability to use multiple dialects of English will emerge. For instance, Australians in local informal situations, will use an English influenced by their own community and its dialect. In more formal commercial or study situations, we will use standard Australian English. On overseas holidays or business trips, we will adopt a "World Standard" English which allows us to communicate with fluent speakers from elsewhere. In the meantime, it is probably more realistic to refer to a World Standard of Printed English rather than a World Standard of Spoken English. And it is as well to remember that differences in variety do not in themselves threaten the role of English as an international language, as difference and change have been a feature of the language since it began.

All this, of course, assumes that English will *remain* the international *lingua franca*. Are its current success and expansion unassailable or does it have competitors? In 1997, David Graddol, a British linguist, was commissioned by the British Council to forecast the role of English in social and economic trends in the 21st century. He argues that it is unlikely that English will be rivalled within the next 50 years. However, it is by no means a safe bet that this situation will continue. The dominance of English may be "a transitional phenomenon", as in the case of Latin, which for almost 2000 years remained a *lingua franca* for a large geographical region stretching from Britain to the Middle East.

Although it is difficult to predict what will occur, Graddol suggests (page 29) that, in a volatile global community with unstable patterns of social and economic development, an "oligopoly" of world languages could develop, each with its own spheres of influence and regional bases. Mandarin may become the *lingua franca* for Greater China, Spanish for the joint trading areas of South America and the US and these, together with Urdu/Hindi and Arabic may serve inter-regional communication as potential rivals to English. Alternatively if

there is increased intra-regional trade between neighbouring countries, patterns of demand for other languages may look very different.

English has always benefitted from developments in technology. It has been an important medium of the press for nearly 400 years (*The Weekly Newes*, from 1622, *The London Gazette* from 1666); the first radio broadcasting was carried in English through Marconi's wireless telegraphy in 1895, the signals first reaching Australia in 1918; similarly, the world's first high definition television service began in 1936, provided by the BBC; the First World War ensured that from 1915 the motion picture industry, with its original roots in both Europe and the US was firmly established in the States; and the first sounds accompanying moving pictures were in English.

With the end of the 20th century has come the explosion in electronically transmitted information and the communication resources of the Internet and the World Wide Web. Will English remain the language of this new technology? To date the answer appears to be affirmative – the US, after all, has been the source of Internet developments. The computer literature and its professional interactions are English-based, as are document handling software, support manuals, helplines, on-screen systems and so on. However, Graddol (page 34) suggests that this could be transitional. As more sophisticated technology comes to support other languages and operating systems are routinely versioned, monolingual speakers of English may find they no longer have access to the best and latest technology.

He estimates that currently 90 per cent of Internet hosts are based in English-speaking countries. However, the Internet could foster minority and other languages. Groups such as soc.culture.punjabi and soc.culture.vietnamese which may have begun their discussions through English now discuss social and political issues, including the hegemony of English, in their own languages. Some of the faster technological developments are occurring in the Indian subcontinent and South East Asia and English may eventually be only one of many Internet languages, used, as it is elsewhere, for international forums, advertising and the dissemination of scientific and technical knowledge.

World English – what are the threats?

No changes in a world language of such momentous proportions, as we have seen with English over the last 50 years, can have a neutral impact. World Englishes offer both opportunity and threat to those who use them. What gains and losses does the internationalisation of English imply?

I have already suggested that a group of world languages, rather than one, and their different varieties may come to dominate international communication. This seems to suggest greater linguistic diversity, but paradoxically, there may well be less linguistic variety

globally. English poses a threat to many regional languages, to the point of what Crystal (2001) has recently described as "language death" and Day (1985, cited on p.80) has referred to as "linguistic genocide".

While people may see many social, economic and educational advantages to learning English, they may also resist the idea of English "colonising" their own national languages. The attempt in the past of the *Academie Francaise* to legislate against the encroachment of English into French is a case in point. English "borrowings" may be seen as the thin end of the wedge, especially in small countries which will compare themselves with other places where English has supplanted or endangered local languages (Manx, Welsh, Gaelic, Maori, Australian Aboriginal languages amongst others). "Did English murder Irish" (Crystal, 1997: 114) – a recent journal headline – reflects the emotive response to the English "invasion" that can be aroused in small nations.

For others, English brings with it reminders of colonial history and military power. Witness the reluctance of the Mauritian people to embrace English in their daily interactions even though it is the official language of government and education. Consider the replacement of English as the official language by Swahili in Kenya, when it gained independence in 1974. This move was echoed dramatically by Ngugi wa Thiong'o, one of Kenya's leading writers, who from 1986 rejected English as the medium for his work in favour of Gikuyu and Kiswahili. In his writings (1985) he highlights the gatekeeping role played by English in the Kenyan colonial educational system (as it does elsewhere):

> [N]obody could go on to wear the undergraduate red gown, no matter how brilliantly they had performed in all the papers on all other subjects, unless they had a credit (not even a simple pass!) in English. (p. 81)

The recent decision by the East Timorese government to make Portuguese and not English an official language reflects the importance of history and identity, and the nervousness over language death that occurs when decisions are made about which languages should be adopted. Compare this with the situation in South Africa where eleven official languages were adopted in 1993, only one of which is English.

So English as a *lingua franca* means both compliance and resistance, as speakers, both native and non-native pull in different linguistic directions. In the case of English language teaching, some commentators speak of the "global inequalities" that are brought about. They argue that it is all too common in inner circle countries to see the spread of and demand for English as "neutral", "natural" or "a good thing". Pennycook, one of the authors in our book, sees the domination in the English language teaching industry of the major English speaking countries – Britain, the USA, Australian and others –

as an essentially political activity which may be likened to a form of "linguistic imperialism". He suggests that dominant western-based models of English language teaching pay little attention to local cultural and linguistic needs and are hegemonic in their impact. He argues that the English language teaching profession should be politically active in opposing this trend.

World English – some Australian perspectives

What are the implications of some of the issues I've raised for the Australian context? Here are some speculations from the perspective with which I am most familiar – English language teaching.

As a variety, Australian English was until recently seen as a poor relation of British English. It is now well recognised in its own right as a major "inner circle" variety. Work from the 1950s by Australian linguists such as Alex Mitchell and Arthur Delbridge, culminating in the *Macquarie Dictionary* (first published in 1981), confirmed the distinctiveness of Australian English. It is still true to say, however, that British (RP) and American Standard English are the two preferred varieties on the global English language learning stage. (Even this situation is changing, however, with American English currently taking over through force of numbers as the leading standard).

Nevertheless, Australia is "in the loop" of a phenomenon – a global language – that is no longer only a theoretical possibility. It is an inner circle country with the added benefits for international trade of a multilingual population (although the potential of this has generally been under-recognised). In contrast to Britain and the United States, geographically it sits in the southern hemisphere, an area where there are relatively few native English speakers (approximately 23 million, including the population of New Zealand and the small numbers in South Africa) and this could potentially provide economic, educational and social advantages. With the notion of "World Englishes" becoming more generally accepted, the ELT industry and its associated tertiary education sectors in Australia could expand substantially in the Asia-Pacific Rim countries and in South America with the right political and economic incentives.

Australia is still the only country in the world (with the possible exception of Canada) to have developed an integrated and relatively well-funded English language educational system for new immigrants, the Adult Migrant English Program (AMEP). This 52 year old program has led to a high level of expertise in educational linguistics, curriculum development and materials publication which is often envied in other parts of the world (Martin, 2000). English language education for international students, including the thriving ELICOS private language school sector ($660 – 740 million), is now estimated to earn Australia more than $3.3 billion annually (Zimmerman, 1999).

In 1998 it was Australia's fifth largest export industry and second largest services export industry behind tourism (Bundesen, 1999). Australia already ranks third behind Britain and the US in this market sector. Careful political "brand management" of Australia's internationally acknowledged expertise in this area could position us as a leading-edge – as well as culturally inclusive – provider of English language services to the rest of the world.

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Endnotes

1 In making this presentation I wish to acknowledge colleagues, Professor Christopher N. Candlin and David Hall from the Department of Linguistics at Macquarie University, and Professor Neil Mercer, Caroline Coffin and Dr Ann Hewings from The Open University, UK.

2 Where no dates are given, the reference is to chapters in *Analysing English in a Global Context*, Burns and Coffin, 2000.

Photo – David Karonidis

Tony Abbott

One of the Howard Government's areas of reform has been industrial relations. Workplace relations have undergone huge reforms since 1996. Taking up the portfolio of Employment, Workplace Relations and Small Business in 2001 was Liberal Tony Abbott MP who addressed The Sydney Institute on Tuesday 20 March 2001 to offer some scenarios on how he would tackle workplace relations in the future.

AGAINST ROONISM

– COMBATTING THE CULTURE OF DESPAIR

Tony Abbott

"Around the Boree Log" used to be one of the staples of an Australian Catholic education. Its best-known poem featured a group of bush parishioners lamenting a world where fire, flood, drought, bad seasons or the banks would surely do them in: "We'll all be rooned," said Hanrahan, "before the year is out." The only non-contemporary feature of this 1921 cameo is its characters' sense of stoicism about the perils of country life.

"Roonism", the conviction that life is bad and getting worse, seems to be a deep strain in the Australian character. "Things are stuffed" pessimism seems to be just as ingrained as "she'll be right" optimism was once thought to be. It seems particularly allied to another characteristically Australian feeling: that of being in the grip of larger forces beyond our control, such as international markets, the weather and the money power. Roonism is almost as prevalent as the "tall poppy" syndrome (of which it seems to be a mutant sibling) and can be just as destructive because few things are more corrosive of effort and achievement than the nagging sense that it's all for nothing.

Contemporary roonism involves a series of unshakeable convictions: "the bush is buggered", "politicians are crooks", "things aren't what they used to be" and above all the pervasive sense that "someone is ripping me off". Dissatisfaction is rife among people whose best selves would concede that they live in one of the greatest countries on earth. Only a few years ago, Australia's self-image was of a rich country getting richer (notwithstanding the mistakes we made). Now, we tend to think of ourselves as a rich country getting poorer. Even among people who are doing well, there is often a sense of loss, the economic equivalent of the "empty nest" syndrome.

A visitor familiar with our traditional readiness to offer the benefit of the doubt might wonder why it no longer applies to anyone in authority or why the price of petrol or the quantity of form-filling should excite so much more anti-government indignation here than in

other countries with similar difficulties. In fact, Australian roonism gains its current momentum from a strange alliance between the economically vulnerable and a commentariat which would like nothing better than the destruction of the Howard Government.

Three forces are now driving a sense of crisis: long-standing popular disquiet about the pace of change and the human cost of economic re-structuring; elite resentment of the Howard Government's social conservatism; and "Calamity Kim" Beazley and his team of economic ghouls seizing on every bit of bad news to talk Australia down. This is the chattering classes' chance to get square with the Prime Minister by using "Howard's battlers" against him.

The essentially conservative people who have become Labor's polling booth fodder need to understand that a Beazley Government would betray their values as well as further threaten their economic interests. To the extent that anything can be made out in the hubbub, it seems that a Beazley Government would not just say "sorry" to Aborigines but would also apologise to the Indonesians for East Timor, support an open door policy for immigration queue jumpers, give the green light for heroin injecting rooms and allow the ACTU to dictate economic policy. These, at any rate, are the clearest conclusions to be drawn from the Opposition's free-wheeling and often mutually inconsistent attacks on every Government policy which has anyone off-side.

There is no fundamental community of interest between the battlers whose resentment has been channelled against the Howard Government and the elites barracking for a Beazley victory in the coming federal poll. Government ministers and officials can't help the fact that they are public sector employees and therefore not subject to some of the economic pressures which buffet people trying to make a living in the real world. Still, no modern Australian government has tried harder to avoid the "god complex" to which senior politicians are prone – and in the past week the Prime Minister has personally doorknocked suburban streets and the entire cabinet turned out for a meet-the-ministers public meeting. The difference between the government and the opposition is not that one is arrogant and out-of-touch and the other isn't. It's more that John Howard hasn't adopted Kim Beazley's habit of agreeing with the last person he spoke to.

Politicians in a democracy never set out to "punish" the electorate. If the government occasionally projects an image of wanting people to "take their medicine", it's because the alternative to economic reform is even greater pain. Reform is hard but failing to reform is even harder. The only people who can afford to be complacent or dismissive about wealth creation are those who have already made it. Economic reform now evokes a sense of ennui among opinion formers (which helps explain why 1980s economic rationalists so readily became 1990s constitutional dabblers) even though many

Australians still struggle to make ends meet and need further reform if living standards are to be protected.

Despite the current economic slowdown (largely focussed on the housing industry and specifically targeted by the government's beefed-up first homebuyers scheme), the last five years have seen measurable improvements in most Australians' living conditions. Since 1996, economic growth has averaged over four per cent a year. Interest rates have averaged 5.6 per cent since 1996 – compared to 11.4 per cent under Labor. Inflation has averaged two per cent since 1996 – compared to five per cent under Labor. There are now nearly 400,000 additional full-time jobs since 1996 – compared to just 26,000 new full-time jobs in Labor's last six years.

Since 1996, the benefits of economic expansion have been more evenly shared. Average weekly earnings have increased 11 per cent in the past five years – after increasing just five per cent in the previous 13. Basic award earnings have increased nine per cent – after falling five per cent during the life of the former Labor government. Economic reform has meant greater workplace flexibility which, in turn, has allowed workers to enjoy higher wages without having their pay eroded through higher inflation, bigger mortgage repayments and higher unemployment.

In fact, few of the tenets of roonism can withstand serious scrutiny. After years of decline, the Bureau of Agricultural Economics says that farm prices are up nearly eight per cent this year and farm incomes up more than 20 per cent. Far from getting wider, the gap between rich and poor has, if anything, slightly narrowed as the wealth of the poorest fifth of the community has increased a little faster than that of the richest fifth, on ABS figures, since 1996.

The New Tax System has resulted in a massive transfer of resources from tax collector to taxpayer or from government to people. On 1 July 2000, due to the New Tax System, the real disposable income (after tax and social security benefits) of someone earning the minimum federal award wage of $400 a week with a dependent spouse and two children increased from $510 to $566. And (as the Labor Party's own monitoring revealed) supermarket prices fell after the introduction of the GST. ACTU chief Greg Combet thinks that the economy is strong enough to justify paying every worker at least an extra $28 a week and that Australia has "a cultural richness…of which we can be proud".

Even so, governments cannot be oblivious to the anxieties of the community and expect to survive. Ultimately, in politics as in business, the customer is usually right. This is why the government has simplified the Business Activity Statement, rescinded the fuel excise indexation price rise and shelved the entity taxation proposals. But it hardly makes sense to condemn a government when it doesn't listen and damn it when it does. It's important for governments to listen, learn and change where necessary. But it's also important for governments to lead as well

as follow public opinion and to give voters what they need as well as what they want. If voters are determined to build walls against the world, they'll eventually have a government which reflects their insecurities. But they cannot subsequently be surprised if Australia starts to traverse the "Argentine road" and becomes collectively incapable of hard but necessary decisions.

Only in a fit of absent-mindedness would a discerning electorate ignore the Howard Government's solid achievements and install as Prime Minister the Employment Minister who presided over 11.2 per cent unemployment, the Defence Minister responsible for the Collins submarines, the Communications Minister who ensured the Telstra-Optus cable duplication and the Finance Minister who ran up a $30 billion deficit in just two years. The electorate is telling the government to lift its game – not to abdicate to an opposition leader turning out to be Keating-lite.

It is almost a "given" of Australian politics that Coalition governments have a bad press. In part, this is because journalists have a professional interest in change over stability, the new over the old and ferment over order. In part, however, it's because pragmatic problem solvers usually make bad spin-masters. Fair-minded observers know that the Howard Government hasn't shirked the big challenges such as guns and East Timor, as well as tax reform. Our task now is to demonstrate that we can handle the moral deficit as well as the budget deficit and to explain how economics serves society rather than the other way round.

Countries, no less than individuals, need a sense of purpose and meaning. People need to feel that their national existence, no less than their personal lives, has moral as well as economic value. As a nation, we need tasks which engage our energies and idealism and provide the sense of high purpose once generated by working the land, sacrifice in war, and providing a better life to all who call Australia home. Above all else, the things we do collectively need to be explained and justified in ways which appeal to people's deeper values and beliefs. We are not so divided about ultimate values that the only appeal left is to the hip-pocket nerve.

We should not be embarrassed to invoke national pride. Just recently, Australia put aside a quarter century of hand-wringing to liberate East Timor (with nothing in it for us except a return to self-respect). We have a unique ability to transform people from every country and culture into enthusiastic Australians almost as soon as they get here because we don't ask them to forget the past. Unfortunately, Australia's take-no-prisoners political and media culture means that all challenges must be minimised lest they scare voters and all achievements must be shrugged off lest their champions look arrogant. Tax reform, whatever people make of it just now, was right and necessary and, with the wisdom of hindsight, might have been better presented in terms of "blood, sweat and tears".

Over many years, relentless partisanship, culpable over-simplification, wishful thinking, and a tendency to deal in numbing euphemism has debased the public discourse. Perhaps what an unhappy citizenry most wants is no longer to be taken for mugs. For people who have lost their jobs or who are at risk of losing their jobs (as well as those called upon to support them) there is hardly a more important part of the national dialogue than employment and unemployment. Unfortunately, out of respect for people's sensitivities (and a desire to avoid disquieting facts), almost no subject attracts so many well-intended fibs.

Sustained high unemployment has done as much as anything to entrench the roonism syndrome. Two decades of high unemployment with government policy chopping and changing to little perceived effect has sapped national morale. Many people have concluded that governments aren't serious or can't cope. Unemployed people resent being on benefits which are never enough. Struggling taxpayers resent people on welfare getting almost as much as those in work. This all-round resentment is probably the most important factor behind the rise of populist political parties. Boosting the economy in ways which put more BMWs on the road without actually reducing unemployment doesn't help – but neither does spending more on employment programmes which service the problem rather than tackle it. To keep faith with the electorate, governments need to explain the real nature of the problem, the long-term impact of their policies and, most importantly, how those policies reflect community values.

When it pretends that higher wages and lower unemployment are sustainable without commensurate productivity increases; that more training will give jobs to people who left school early to avoid being taught; that higher welfare benefits will help unemployed people even though paid work becomes less attractive; that, in fact, the only help which unemployed people don't need is self-help, the Beazley Opposition stands in the tradition of government by magic wand. By contrast, a government which understands that workers can't earn a wage unless bosses make a profit, which tries to make workers more productive and therefore more employable, which is determined to be unsentimental about the problem and to avoid patronising the unemployed seems fated to a mixed reception. People who expect to be conned often find a "no frills" approach hard to handle. One of the side-effects of roonism is to demand painless one-dimensional solutions to complex cultural problems and to be unreasonably angry when policy-makers have too much integrity to offer them.

When ex-Treasury Secretary Ted Evans said a few years ago that Australia could choose its unemployment level, he revealed one aspect of the unfashionable truth about unemployment: namely, the relationship between higher pay and higher unemployment. The way one man's pay

rise can cost another man's job is invariably glossed over by those seeking golden reputations as friends of the underdog. For those who wish to make a name with the other end of town, it has to be said that wage restraint alone will not deal with unemployment either, because at some point low-paid workers will be better off on social security.

The welfare state did not exist when the great economic texts were written and most analysts still haven't taken its consequences fully into account. The creation of new jobs might make little difference to the unemployment rate if working is more trouble than it's worth. Tackling unemployment the old way could produce the paradox of unfilled jobs coexisting with high numbers of unemployed unless we also ensure that Australia's income support structures reward work over the alternative.

In June last year, before the introduction of the New Tax System, moving from total welfare dependency to earning the full-time federal minimum award wage of $400 a week boosted the after-tax-and-benefit income of a household comprising an adult, a dependent spouse and two children from $410 a week to just $510 a week. In other words, a full time, minimum wage job meant this family was just $100 a week (or about $2.50 an hour) better off – and that was before the added expense of going to work and losing "pensioner discounts". What's surprising under these circumstances is not that Australia has an unemployment problem but that it isn't worse. All too often, people on benefit with an opportunity to work face an invidious choice: working full-time for little extra money; doing "unofficial odd jobs"; or waiting for a better offer. The fact that so many people do the right thing suggests that the Australian work ethic is far from dead and that people still have a strong sense of the inherent dignity of work regardless of what it pays.

Even so, the depression era paradigm of unemployment as too many people chasing too few jobs can be just as misleading as the "dole bludger" stereotype. Unemployed people want work but not necessarily the entry level jobs they're likely to find – which are often part-time and, to start with, modestly paid. As unemployment becomes "inter-generational", persuading people to take the "long view" about "McJobs" becomes harder and harder. The challenge is to boost incentives to work without raising entry level wages (because that would destroy jobs in small business) and without cutting welfare benefits (because that would impose an unconscionable burden on people doing it tough already). An electorate which is impatient for solutions needs to understand that job seekers' motivations are just as important as economic conditions and rather harder to shift.

Research for the McClure Committee showed that 40 per cent of people on unemployment benefits in September 1995 were again on benefits in June 1999. For people without a strong work record and

readily marketable skills, regular, structured activity is the most humane and compassionate way to make employment more attractive than unemployment. My department's latest research seems to confirm that structured activity acts as a powerful incentive to seek work. Three months after completing Job Search Training, a three week full-time course on how to find work, just over 40 per cent of participants have found jobs. But the "before effect" of referring people to Job Search Training has turned out to be just as important as the "after-effect". Simply referring people to the program makes a significant difference to job seekers' motivation. Of the 132,000 people referred last year, 34,000 went off benefit before starting the course and it's estimated that nearly 40 per cent did so simply as a result of referral.

Keeping long-term unemployed people active is a very important part of maintaining their morale. A departmental study of Intensive Assistance participants (which is the main Job Network program for long-term job seekers) showed that just under half have reduced motivation levels and are not particularly active in seeking work. The study showed that 16 per cent have almost withdrawn from looking for work and that a further 11 per cent have adapted to unemployment and don't believe they would be better off working. Policy making which assumes that all job seekers are eager to accept any reasonable offer is doomed to fail and to reinforce roonist assumptions that governments don't know what they're doing.

Just before Christmas, Senator Jocelyn Newman foreshadowed the first instalment of the government's response to the McClure Report on welfare reform. As the then Minister for Family and Community Services explained, the government wants to ensure that it's impossible for people to claim unemployment benefit and disappear into the system. Except for very vulnerable people immediately referred to the Intensive Assistance programme, all job seekers will receive Job Search Training after just three months on benefits. Job seekers under 40 on benefits for six months will receive structured work experience under the Work for the Dole programme to rebuild their work culture and renew connections with the wider world (unless they are in formal education, one day a week paid work, two days a week volunteer work or another mutual obligation activity).

For people on unemployment benefits, this will mark a further decisive shift from a passive to an active welfare system. It underscores the government's determination to change the culture of employment and unemployment. The government is not proposing American-style time-limited welfare payments but is determined to eliminate open-ended, few-questions-asked, long-term dependency on unemployment benefits. This move to a "participation" focus certainly won't mean American-style "work-fare" for single mums but will mean a form of

work-fare for long-term job seekers based on the clear understanding that the best preparation for work is work itself.

There are nearly 300,000 people under 40 who have been on unemployment benefits for six months or more. Ensuring that activity-tested beneficiaries really are active will be an extraordinary challenge for Centrelink to monitor and for Job Network members and Community Work Coordinators to implement. Experience so far suggests that this mix of government, private sector, community-based and charitable agencies produces the compassion and creativity to address the complex human dimensions behind the unemployment statistics.

Work for the Dole is by no means the Howard Government's largest employment program but has become a "signature" policy symbolising its determination to end the era of "something for nothing". A departmental study released last year showed 90 per cent support for Work for the Dole – including 70 per cent support among people on unemployment benefit. A 1999 survey showed that a modest increase in the size of the Work for the Dole program was by far the most popular item in that year's federal budget. Work for the Dole accords with the common sense position that it's usually better to be doing something rather than nothing and has been more popular with the community than with welfare activists – or, for that matter with economists who don't like the expense.

Work for the Dole is a robust application of community values to policy making. The government gives people a "fair go" by paying them a benefit if they haven't got a job. But it also expects them to "have a go" by participating in useful community projects. It provides the community with reassurance that their values still underpin government policy. And while the ALP says it will keep Work for the Dole, it wants to redesign the program and change its name. With "Claytons" work for the dole, Labor would perpetuate the one-sided mutual obligation on the taxpayer to just keep paying which risks undermining the consensus on which a welfare system must rest.

On its own, Work for the Dole will not end unemployment and will not defeat roonism. But it will end some of the consternation unemployment causes by re-assuring job seekers and taxpayers that they are still part of the same team. Because of big increases in participation, it's probably impossible to reproduce Menzies era unemployment rates. Still, at any given level of economic activity, it should be possible to reduce the level of structural unemployment by changing the culture of job seeking. If it's impossible to guarantee that job seekers find paid work, governments can at least ensure that they eventually have something useful to do. If the alternative to working for a wage is working for the dole, unemployment will start to come down but only if governments continue to hold their nerve and voters resist the blandishments of the soft-option and the quick-fix.

1. Stephanie Fahey, Ms Tatsumi
2. Katrina Dean, Lachlan Delaney
3. Tony Wellington, Judy Detter
4. James O'Toole, Anne Henderson
5. David Gruen
6. Victor Voets
7. Peter Fields, Anne de Salis
8. Russell Williams

Photographer: David Karonidis

Photo – David Karonidis

Vin Weber

Vin Weber is a managing partner at Clark & Weinstock and provides strategic advice to businesses interested in the governmental processes of the legislature and executive branches of government. From 1980-1992, Vin Weber represented Minnesota's Second District in the United States House of Representatives and, prior to joining Clark & Weinstock, he established the non-profit organisation, Empower America, with Jack Kemp, Jeanne Kirkpatrick and Bill Bennett. He also worked closely with George W Bush as part of his election campaign team in the 2000 US Presidential elections. To assess the Bush win and its implications, Vin Weber addressed The Sydney Institute on Tuesday 27 March 2001.

THE BUSH
ADMINISTRATION – PROSPECTS AND EXPECTATIONS

Vin Weber

In the interest of full disclosure I should fill in a few blanks because no one in this audience knows me very well. I did serve in the Congress for 12 years from 1981-1992. I had the good sense to leave Congress just before the Republicans took the majority, so I never served in the majority in Congress.

I was the Chairman of Jack Kemp's presidential campaign in 1988, in which we spent $12 million. At the end of that process Jack was Secretary of Housing and Urban Development. In 1992 I signed on as co-chairman of the Bush re-election campaign. At the beginning of that campaign, President Bush had the highest ratings in the Gallup Poll of any president in American history and in the end he got fewer votes than any incumbent president since Herbert Hoover. This is a testimonial to my political prowess and insights.

I signed on in the 2000 campaign two years ago for John McCain and was a member of his kitchen cabinet. The current president rescued me from political oblivion and brought me into his campaign as a member of his "DC Steering Committee" – the only person from the McCain camp to cross that canyon in American politics. I have a mixed record of prognostication but never failed to be involved.

The most important thing about me is where I come from. I always say this in terms of the speeches I have given. In the last few months they have mostly been analyses of last election so I'm going to start off by talking about the American election, and then I'll try to use my insights into that election to talk about the administration and where it might go in the next couple of years. I usually begin talking about the 2000 Presidential election by saying that many people in America describe it as the most surprising election they have ever been through. Of course, it was the closest presidential election by some standards in American history and an election that wasn't over until well into December. An election, the outcome of which, you can still

argue about in Washington and elsewhere. It's pretty common for people to say they've never lived through a more surprising and shocking election.

Now that may be true in 49 of the 50 states in the United States. But, I am from Minnesota. And in 1998 I woke up and found out that my Governor was a professional wrestler who liked to dance around in the ring wearing a feather boa. So, there are things more surprising in my backyard than a very close election.

Nonetheless, the most interesting thing about the election, of course, was that it was so very close. We ended up with the popular vote going to Vice-President Gore by about half a million votes – not a lot in an electorate the size of the United States. In the House of Representatives, where I served for 12 years, there was a five vote margin for the Republicans and in the Senate we have an even split for the first time in many years.

That leads on to what in my view is a misunderstanding about the election and about the American political system. It can lead to a misinterpretation of the Bush administration and what it might do. In the United States, and abroad as well, the interpretation of the election is that because it was so very, very close, America must be hopelessly divided and more important than that, deeply, deeply divided. And I argue that is not the case.

It is certainly the case America is closely divided between Republicans and Democrats and the last election showed that. This has been so for the last six or eight years, at least since the Republicans took control of the Congress. But think about the debate that took place, or rather that didn't take place, between Vice-President Gore and Governor Bush in the last campaign. The striking thing, regardless of how the election turned out, is how much of what we used to argue about in America we did not argue about in this election – how many broad areas of agreement there are.

I'm not trivialising the things we differ about. But it is the case in the democratic system, whether it's Australia or the United States, whatever the parties disagree on become items of mountainous contention just before an election, no matter how important they might have been six or eight months earlier. And of course, we fought vigorously about things that Governor Bush and Vice-President Gore disagreed about. We didn't spend much time talking about the things they agreed on. And those are worth thinking about, namely three main zones of policy – foreign policy and national security, economic policy and domestic or social policy. This agreement on areas that at various times in our history were strikingly divisive is, to me, the most important thing in the last election.

We've gone now through three elections since the fall of the Berlin Wall with basically no disagreement about foreign policy. That's

a remarkable thing. Both Vice-President Gore and Governor Bush agreed on the essential elements of foreign policy. They agreed on an internationalist agenda, and on the need for a military build-up, although they differed somewhat on the details. This was best evidenced by the one issue that did arise almost by mistake in the last ten days of campaigning. Condaleezza Rice, now National Security Adviser, suggested that the Americans would want to withdraw the contingent of forces in the Balkans, and leave a Europeanised force. That was quickly smoothed over and we said we wouldn't do it without consulting. But that was about as big as any argument about foreign policy in the entire campaign.

I was in college during the Vietnam War when foreign policy turned Americans into the streets. It had an impact in Australia as well. I remember when foreign policy in the 1980s divided the American people on the issue of aid for the Contras, the anti-communist guerillas in Central America – probably the most emotional debates we had in the Congress. The fact that there was virtually no disagreement on any aspect of foreign or national security policy in the last election is no small matter to me. It is something that has been overlooked a lot in most interpretations of the last election.

There are nuances of difference and there are question marks, which I'm sure the rest of the world wants to see answered. Questions about how this administration is going to proceed in terms of its foreign policy and its national security policy. But, the central issue of U.S. leadership in the world is less divisive politically today – not more.

Economic policy, which probably defined politics in America for a long, long time, and in some way still does, also saw remarkable areas of agreement. This will break down as the economy softens and the stock market goes down, perhaps we teeter on the brink of recession, but in the last campaign there was no argument about monetary policy at all. Everybody agreed that Al Greenspan should be reappointed. Neither Democrats nor Republicans took a protectionist line on trade policy. Pat Buchanan left the Republican Party, and got less than one per cent of the vote advocating protectionism on a reform party ticket. Vice-President Gore, to his credit in my view, rejected the call of protectionism by organised labour and did not put forward a protectionist platform. He embraced trade, trade liberalisation and trade expansion.

We saw the two parties agreeing on monetary policy, agreeing on trade policy and even agreeing on fiscal policy although that's what they're arguing about right now. The two candidates agreed that Fiscal policy, going forward, should include debt pay-down, tax cuts and spending increases. No one argued for increasing taxes, no one argued that paying down debt shouldn't happen and no one argued for cutting spending.

There is still today basic agreement on those policies. There is argument about how much of a tax cut – $1 trillion over ten years or $1.6 trillion over ten years and whether it be tilted more towards the rich or more towards the middle class. There is argument about whether to increase domestic spending or military spending, but there is an essential agreement on the outline of fiscal policy.

Even in the area of social policy, where the two parties should disagree a great deal, I found great agreement. The biggest single innovation in American social policy in the last ten years was the passage of welfare reform. We basically initiated a policy of moving Americans off welfare and on to government assisted work programs. Welfare enrolments in America have dropped by around 60 per cent across the country in the almost five years since welfare reform has been enacted. We have increased expenditure dramatically on programs to support working people.

You would have thought that somebody in one party or the other would have argued about that in this campaign. Either Governor Bush, the candidate of the right, might have said we're going to cut back on those work supports or Vice-President Gore, the candidate of the left, might have said we're going to restore welfare and end the time limiting of it. There was no disagreement at all on the biggest social policy change in our country in the last 20 years.

So on the three big areas of policy we've found remarkable degrees of agreement. And the two parties are reduced to arguing about rather small issues at the end of the day.

The big division in the country is very interesting and has some parallels in other parts of the world. In American politics today there is a cultural division. One that doesn't easily fit into a discussion of issues as we traditionally thought about them. Traditionally America had divisions between left and right which were definable in terms of income. That's breaking down very considerably. Democrats have made big inroads with upper income voters. Republicans are making big inroads with lower income voters and at least lower income white voters.

But the biggest determinations of how people might have voted in the 2000 Presidential elections have not had to do with income and have not had to do with education – the two major indicators of the past. They have to do with church attendance and gun ownership. The Gallup polls have done very interesting analyses based on church attendance. Of voters who attend church every week or more, 80 per cent voted for Governor Bush. Of voters who never go to church, 60 per cent voted for Gore. This is now the most reliable single indicator – people who go to church vote Republican, people who don't go to church vote Democrat. And if you own a gun or somebody in your household owns a gun, 60 per cent of you voted for Bush. Since 48 per cent households owned guns that's what helped him get elected.

These two cultural indicators are becoming better indicators of the division of American politics than the traditional indicators we've looked at such as income, socio-economic practice, educational status and so on. It's reflected in the way the country voted geographically. Maybe you've seen the maps that have developed since the election – the red and blue coded maps where the red areas are for Gore and the blue areas are for. There are now full red strips along the two coasts and everything in between is blue. Governor Bush carried all these under populated areas of America and by relatively heavy margins including many who had voted relatively strongly Democrat in the past, not only in the south but the rural and agricultural regions in the mid-west.

So we have a division in American politics and we don't know where exactly it will lead in the future. But it's not a division as deep or as important in terms of policy as people might think. And that's why the president will succeed in uniting people on policies, notwithstanding the fact that the country was divided in the election, and notwithstanding the fact that Congress is very closely divided on where it wants to go.

On the one hand, we have probably the strongest foreign policy and national security team assembled by any President, at least since the World War. The Vice-President, a good friend of mine whose office was next to mine in Congress, is himself former Secretary of Defence. Colin Powell, Secretary of State, continues to be the most popular American in either political party. He is really the only figure in American politics who transcends political party. And my friend, Don Rumsfield is the new Secretary of Defence, taking a job that he had in the 1970s. Condaleezza Rice, National Security Adviser is arguably one of the closest people personally to the President of the United States. She almost didn't want to come to Washington because her father is old and retired in California. She's single and didn't want to be away from him. The most important thing about her is that the President loves her and listens to her all the time.

Another phenomenon is that this president is the first Republican president, in my life, who has cared more about domestic policy than about foreign policy. This is not unusual for the Democrats, but it's very unusual in the Republican Party. Richard Nixon cared only about foreign policy and was quite explicit, certainly after he left office, saying he viewed economic policy and social policy as leverage to be manipulated. A President's job was to conduct foreign policy. Ronald Reagan, who cared about many aspects of social policy, who cared about taxes, at his core was an anti-communist who viewed the world in terms of the Cold War. That struggle was central to his political life and his presidency. George Bush senior had, as people like to say, the longest resume in American politics, almost all in the foreign policy area – Ambassador to the United Nations, Central Intelligence Agency,

Ambassador to China – that's what he cared the most about. It cost him his presidency. In the wake of the Gulf War he did not turn his attention to domestic policy, but continued to focus on the peace process in the Middle East at a time when the American economy was slipping.

George W. Bush cares mainly about domestic policy. That's not to say he will ignore foreign policy, but he is a former governor. His first priorities in this Congress have been the Education bill, which flies in the face of traditional Republican thinking because it centralises more authority in the Federal government, and a major tax cut, contentious but almost surely going to be passed, at least in some form. And he's going to have to deal with the issue of welfare reform because the welfare bill is going to have be reauthorised.

Those are the things that this President cares about. He's stirred a small controversy on an issue called Faith Based Initiative, which talks about direct government support to church organisations involved in fighting poverty. These are the kinds of things he cares a great deal about. No Republican President in my life, certainly maybe in this century, has cared more about domestic policy than foreign policy. That's going to be an interesting division as we go along, particularly given the strength and dominance of those who are dominating the national security and foreign policy side of our government.

As to the Bush relationship with the Congress on those issues, it is going to be interesting because the Congress, over the last ten years, has become much more interested in domestic policy than it has in foreign policy, in both parties. There hasn't been a good debate about foreign policy in American national elections since at least 1980s.

The American people, perhaps predictably, have rallied behind the President pretty well despite the difficult circumstance in which he came into office. His approval ratings are about where a President coming into office has been in the last 20 years. They're moving up steadily. The country basically supports him on education, on his tax plan, and on the kind of people that he's put into government. But, as with most other democracies, the next election is only a couple of years away. In America that's already the case. The next election is going to be as hard fought as any we've seen in a long time.

The House of Representatives is now at a five-seat majority. Two countervailing forces are affecting the outcome of the election in 2002. We have a normal cyclical process. A cyclical result that says a party in the White House should lose seats. By tradition, Republicans then should lose enough seats to lose control in Congress based simply on the history that says the party in the White House always loses seats in the President's first off-year election.

Cutting against that is the fact that this is the year in which we redistrict the country because of the census. And the redistricting process is going to move seats from the Democratic northeast and mid-west to

the Republican south and southwest and the Democrat inner cities to the Republican suburbs. And although it's a mixed bag, most people estimate that it will offer Republicans anywhere from five to 25 seats.

There are 34 seats up in the 2002 election, 20 of them are Republican held seats and 14 of them are Democrat held seats. So the simple arithmetic tells you that the Democrats would have a greater advantage of winning Republican seats than the Republicans would of wining Democrat seats.

All of this, of course, is inconsequential in the face of a larger reality, which is that the economic situation, in America as in the rest of the world, is changing very dramatically. We have a situation like you have in Australia. You have some economic difficulties and the Opposition is accusing the Government of painting a rosy picture because they've been in office for a while and have to account for it. We have quite the opposite situation in America with the Opposition Democrats accusing the President of talking down the economy because he definitely does not want to take responsibility for any problems that he may have inherited coming in.

In terms of the interests of Australia and the Asia Pacific community this is going to be a positive administration. This administration believes that the past administration was too focused on Europe, too interested in the Russians and the Chinese. There's going to be much more emphasis on the Asia Pacific community and on those who have traditionally been friends and allies of the United States. Certainly that ought to go well for the Australia-United States' relationship. I am personally hopeful that we will see some kind of US/Australia free trade pact passed in the next few years. Bob Zoellick, the new trade representative, is a good friend of mine and, as long as that is the bi-partisan desire in this country, he wants to see that happen. In addition to that, this administration and the trade advocates in the Congress and elsewhere in the country have a real sense, without being critical of the Clinton administration, that trade liberalisation is an area that has stalled.

It's happened for reasons from the end of the Clinton administration. We couldn't fast track authority for the President without which you can't really conclude any kind of a trade agreement with the United States. There was a pent up sense that we did not move fast enough. President Bush wants to move on it, Zoellick wants to move on it and the trade advocates in the Congress want to move on it. In addition, Bob Zoellick told me, in terms of Australia specifically, he feels positive about moving forward. The problems with agriculture are unquestionably the main stumbling block. But I believe people in the United States understand that is a problem we have to deal with. And we've got political realities of our own to deal with. No president who got elected essentially by the non-urban population of the country

is going to put a gun to his head on those topics. But if we're willing to negotiate I think that there's a way around that and I have enough confidence in Zoellick that I think it can happen.

There has been a transformation of American foreign policy in the wake of the Cold War. The Democrats, who became quite isolationist after the Vietnam War, later became more interventionist. But it seemed that they only wanted to intervene for humanitarian reasons, and not to protect American interests. The Republicans, on the other hand, were ready to intervene almost anywhere by the end of the Reagan administration to fight the Cold War. I agree with President Clinton's intervention in Kosovo. I supported it and tried to get my former colleagues to help out there but most of them opposed. They apply a fairly strict definition of America's national interest. Of course, if you use the definition of national interest that we used during the Cold War, nothing is in our national interest any more. During the Cold War everything conceivably threatened our survival as a nation, so everything was our national interest. Now nothing conceivably threatens our survival as a nation so nothing's in our national interest.

In general, Republicans now, are resistant to intervention abroad and Democrats are more at ease with it. Israel is an exception to almost every rule in regard to American foreign policy. This administration is going to be less interested in trying to pursue the negotiated path that President Clinton pursued. I think that they are going to be more willing to let things take their course, but the American commitment to the security of Israel is really unshakeable in my view. At various times in history, the United States has guaranteed Israel's survival. America is not going to back away from its commitment to Israel. It's going to back away from the Clintonian notion that we can broker a settlement in a short period of time to the Palestinian question. America is burned on that subject and it's not the inclination of this President to try that kind of negotiation.

I was in Congress when President Reagan suggested the missile shield idea and I understand the difficulty with it. But this administration is going to proceed with it. They're going to proceed with it consistent with technology and consistent with budgetary reality which are two big constraints. The President was unequivocal about it in the campaign. He has appointed as Secretary of Defence probably the most prominent advocate of missile defense outside of the government in the last eight years. The Rumsfield Commission basically offered the strongest rationale for missile defense of any body, outside the government, since the Reagan speech in early 1980. We're going to do it unilaterally, but in consultation with our allies and we're going to try and find a way to make it acceptable to them. The question of whether or not we'll share the technology with the Russians and Chinese and others is still an open question.

I have never believed that a shift from offensive to defensive weapons has to be a fundamentally destabilising process. Nor does it have to be a fundamentally more expensive process. This administration is not going to back away from that. It is an issue that unites the Republican Party very strongly. President Bush is more popular in his party than any president since Franklin Roosevelt in the Democratic Party. He got 93 per cent of the Republican vote. The Republican Party cares about missile defence. They believe in it and he's not going to back away.

The US got a long civics lesson about its electoral system in the course of the recount in Florida. The strength of our electoral system probably has always been that it does ultimately lead to a conclusion. The notion that we could reopen the Florida result is well past most Americans. Certainly some of my ardent and erstwhile Democrat friends are re-fighting it every day but most Americans are just glad it's over. They don't care about the recounts. We came to a conclusion and one is probably as good as another to most people. They just don't want to go back and do it again.

It's interesting though, in terms of legitimacy of the Presidency, what happened. I was involved in a lot of discussions before the election on how we would deal with a split decision? What would happen if the Electoral College vote went one way and the popular vote another. The discussion came up so often because there was an expectation that there would be a split decision. The expectation was that Bush would win the popular vote and Gore would win the Electoral College vote. The polls on the weekend before the election were showing Bush with overwhelming majorities in the south and the west and Gore with relatively narrower majorities across the mid-west and the industrial east and west coasts. Gore would have led in the electoral votes and Bush the popular vote. Had we not had the dispute in Florida the difference between the electoral vote and the popular vote would have been a much bigger issue.

Last time this happened was during the 1890s and things have changed a lot since then. Most Americans actually believe that whoever wins most votes becomes President. And so legitimacy and the presidency became focused on who won Florida, and if it was a fair count, who had done the right thing or the wrong thing. Eventually the fact that Al Gore got a half a million more votes than George Bush was almost ignored. Most people never focused on it, which was good news for Bush. In a strange way Bush was almost lucky that he had a fight in Florida. If it had simply been a focus on the Electoral College difference with the popular vote, people would have had a harder time accepting it.

I don't think we're going to change the electoral system in the United States. One thing people saw in this election is that we have no

better electoral procedures anywhere across the country than we have in Florida. If we had to recount the whole country we'd never choose a president. So the system that we've got now is probably not going to change. But there will be an electoral law that tells us what machines we can use, what kind of ballots are acceptable and which federalises that piece of the process. For all that, I don't see any constitutional change in terms of the Electoral College strategy still continues to make presidents.

1. Gerard Henderson, Michio Naruto
2. Michio Naruto addresses The Sydney Institute
3. Nobutake Odano, Peta Seaton, Michio Naruto
4. Babette Smith
5. Japanese Consul General Nobutake Odono introduces Michio Naruto
6. Robyn Williams
7. Robin Batterham, Ann Henderson-Sellers, Ron Johnson, Catherine Livingston

Photographer: David Karonidis

Robin Batterham

Robyn Williams

Catherine Livingstone

Ann Henderson-Sellers

Ron Johnston

Continuing The Sydney Institute's 2001 "Australia Chooses" seminars, Robyn Williams of the ABC's Radio Science Program hosted an important discussion on science and the commercialisation of ideas on Wednesday 28 March 2001. The participants in the panel that led the discussion were Dr Robin Batterham, Chief Scientist, Commonwealth of Australia, Professor Ron Johnston, Centre for Innovation and International Competitiveness, University of Sydney, Professor Ann Henderson-Sellers, Director, Environment Department, ANSTO and Catherine Livingstone, Company Director and former CEO of Cochlear Limited.

SCIENCE AND THE

COMMERCIALISATION OF IDEAS

Robin Batterham, Anne Henderson-Sellers, Ron Johnston & Catherine Livingstone with Robyn Williams

ROBYN WILLIAMS: Recently I broadcast something on the Science Show. Australia's Chief Scientist Robin Batterham who spends some of his time at Rio Tinto, and some of his time as Chief Scientist, warned that if Australia doesn't think deeply about science policy, commercialisation and innovation then we will continue to be perceived as an old economy and we will plunge towards a 30 cent American dollar. Well, since then, now we've got 18 cents to go.

It's very interesting trying to convince people in government that science is really the basis for innovation. I remember ten years ago, when I was in Canberra, it was suggested by a number of people in parliament, in science and industry, that what you did with innovation was improve, polish, fiddle with something that was already there. In other words, only six to eight per cent of innovation actually came from bright ideas from people with that "eureka" moment. Since that, of course, there have been many major studies, especially in the United States, suggesting that 72 per cent, at least, of the patents that come on, year by year, owe their existence to this kind of eureka science research.

About 18 months ago, the Chief Scientist was working on what eventually became the paper *The Chance to Change*. That led to the Prime Minister, in January 2001, announcing the innovation statement. Since then we have been at least in the league with those who are taking this idea seriously, those people around the world who have burgeoning economies based on investment in science and technology.

So the question tonight is whether we are still on track, whether what was announced in January was enough, whether our business people are convinced and what else we have to do. We have four speakers. Dr Robin Batterham, Chief Scientist of the Commonwealth of Australia, who will address us, if you like, on the "chance for

change" will open the discussion. He will be followed by Catherine Livingstone, with an astonishing CV, and who is former Managing Director of Cochlear Limited, the Australian company that has shown our inventors can have the edge. In this centenary year it is worth remembering it is the centenary of the experiments that began in the States with the Wright brothers and which were related to the first flight in 1903. Australia's Lawrence Hargrave's work was inspirational in this but a number of Australia's bright ideas didn't quite get taken to their proper limits.

We will also hear from Ann Henderson-Sellers whom I first met as a Professor of Geography at Macquarie University. But she's a mathematician interested in astronomy. Then she became the Deputy Vice-Chancellor at Melbourne's RMIT and now heads up the environment department at ANSTO, a position which she regards as oxymoronic. In other words in charge of the environment at Lucas Heights.

Our fourth speaker will be Professor Ron Johnston who was a chemist in a previous life. I first met him when he was a science policy person from Manchester. He came here to the University of Wollongong. And then he went to the University of Sydney two years ago where he is head of the Centre for Innovation and International Competitiveness.

If you look at our near neighbours we have the most fantastic advantage. Indonesia with 220 million people. Look at our time zone. Beijing is only a couple of hours behind. And there are huge populations there. The first thing you notice when you go to a major Chinese city like Beijing, is that you can't breathe. The air is unbelievably awful. Nine out of ten of the big cities in China have pollution so bad it kills their children more than any other single factor including gastro. Most extraordinary. You won't get the big outfits in the States or Western Europe doing the simple experiments needed to fix many of the problems of life in these cities. Like how to fix converters. But why is it important? Because it is illegal to have filthy machines getting round the streets in major cities, especially Delhi. And so what do you do if you're stopped by a policeman and he's said, "You have broken the law, your machine is filthy"? You either buy a new converter for 300 bucks or you give him 20. And that's what people do. A catalytic converter that can be treated so it can last 50 per cent longer is a huge innovation. And it affects millions upon millions, upon millions of people.

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ROBIN BATTERHAM: *The Chance to Change* (www.isr.gov.au/science/ review.html), acknowledges Australia's strengths. We have a great science and education base with entrepreneurs waiting in the wings to grow, invest and create additional

jobs. In January 2001 the Federal Government's innovation statement, *Backing Australia's Ability*, (www.innovation.gov.au) provided further dollars to invest in innovation, to fund much of the cultural shift now essential to build economic growth and to foster open-ended discovery.

The challenge of translating the vision into implementation is, for a moment, with the bureaucrats. They are engaging the research community and industry across the nation. In workshops and roundtables they are checking the specifics by which Australia can increase its level of commercialisation of the wealth of new ideas now seemingly hidden within the depth of the universities and research groups. Among their questions:

- where might the next round of major national research facilities be located;
- from which areas of the private sector might matching seed capital funds be provided; and
- where best do we focus an upgrade in university systemic infrastructure?

There are still gaps. Australia has the base but we are handicapped in terms of commercialisation. With few metrics available to measure innovation how does the community determine, vis à vis the ARC grants, whether it is more to Australia's advantage to double the value of the grants, or double the number?

The question confronting Australian science is how to turn intellectual capital into national assets. Our universities are vital elements of a productive, knowledge-based economy. Their teaching spawns intellectual prowess. Their research stimulates start-up and spin-off companies that add to Australia's wealth. Their research fosters scholarship.

In the last 50 years Australians have won, or shared, Nobel Prizes in medicine, physiology and chemistry. In the last ten years the Australia Prize and the Prime Minister's Prize for Science have recognised the high international standards in this country in agriculture, minerals processing, sensory perception, remote sensing, pharmaceuticals, telecommunications, molecular genetics, energy science and plant physiology among others.

On Monday (26 March 2001) FASTS celebrated the ISI Science Citation Laureate Awards to recognise Australia's high levels of international performance in patenting, as ranked by the Institute for Scientific Information, in fields such as plant biology and biochemistry, astronomy and astrophysics, immunology, pathology, geology, soil science and pharmacology.

There have been areas where Australia has not had success: in atomic absorption spectroscopy, and in plastic bank notes. Memtech sold its IP very early and while Cochlear and ResMed are great

successes for Australian research, the stories are greater than are the returns for the Australian economy.

A key element in Australia's success will be our capacity to continue to generate new ideas and bring them to life as innovative and exciting new Australian products, ideas and services. Through the additional funding in the innovation statement *Backing Australia's Ability* Australian universities and research institutions can build on their strengths, explore new opportunities and compete successfully with the best the world has to offer.

With the impetus of *The Chance to Change* and David Miles' report: *Innovation: Unlocking the Future* all Australians in the community, in business and in research can capitalise on the opportunities in the innovation statement. As we do it will be easier to make the connections between the players in the innovation system, and hence, the process of commercialisation.

Government programs focussing on science, engineering and technology are extending their reach to give more people the skills needed to grow in all segments of the new economy.

Can we now similarly leverage the education system to provide the skilled workers and the entrepreneurs? Students would not only develop skills in cooperative work programs, but by receiving lessons in entrepreneurship and the challenges faced by many individuals starting new businesses, they would gain a new language of dialogue linking the classroom to the world of business.

Concurrently can we re-consider the scholarship, the core skill of the university sector, that feeds the knowledge base?

Australians possess all the innate abilities to thrive in a global economy. We are a creative, and determined people, we are educated and when confronted with challenges and opportunities use our core skills in science, technology and engineering to achieve solutions.

By thickening our R&D base, by managing rather than avoiding risk, by adding to seed capital, by being an active member of the global economy, Australia can capitalise on the enormous potential of the new millennium. Then we will increase our self-esteem such that if a product or service is Australian it will be first-rate. With excellent Australian SET, its products and services will be translated into great businesses.

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CATHERINE LIVINGSTONE: My focus this afternoon will be on the commercialisation side of science, and I'll comment briefly on four distinct but related aspects, viz

- Australia's mental model of itself,
- Trends in industry structure in Australia,
- The role of government policy, and
- A view from the broader social horizon, and some choices we appear to be making

First, to our self image. In this context, it is a relief to see the pendulum swinging back to a more moderate position in relation to the old economy/new economy distinction. Australia was rapidly allowing itself to be consigned to an "old economy" basket when, as Philip Evans from BCG has observed so succinctly, "it is increasingly clear that a new economy is not displacing the old one; instead, the old is transforming itself from within".

So should Australians recognise this country's world leadership in, for example, the export of mining and agricultural technology and techniques, or in the fast ferry market. The success of the latter derives from the aluminium welding techniques developed in the fishing industry during the 1950s – a very "old economy" connection! Added to this is Australia's strength in medical technologies – Cochlear, CSL, ResMed are well known public company examples; others such as Gropep, Compumedics, and Q-Vis are perhaps less well known, but they are at an earlier stage. More recently, in the field of genetic research, Bionomics from Adelaide has filed patent applications covering 63 genes implicated in sporadic breast cancer.

So, with all this, why do we persist with our own defeatist mental model that we are not capable of commercialising ideas and participating in the global economy? Any sports psychologist will tell you that success is a state of mind. It is becoming increasingly important that Australia focus on what it has, and can, achieve, rather than on commiserating about lost opportunities.

Turning now to the aspect of industry structure. We clearly have weaknesses in the areas of both scale and critical mass. Scale is a critical factor for many companies, where the Australian domestic market is simply too small to enable them to achieve profitability at the levels required to support the needed investment in ongoing R & D and marketing. They must therefore compete offshore, whether regionally or globally, often against significantly larger organisations. To apply competition policy to these organisations using the Australian domestic market as the frame of reference may have the outcome of constraining companies from acquiring the scale they need to compete – and worse, leave them vulnerable to offshore takeover especially given the current value of the Australian dollar. The technology in such companies is unlikely to be further developed in Australia: it may be relocated and irrevocably lost to us as a source of economic growth. Not a very positive outcome for the Australian consumer.

This leads to the other leg of my discussion of industry structure, and that is the need for critical mass. I have before used the analogy of the bath. Australia has both taps on full in order to build a critical mass of innovative technology industries, but has left the plug out. Without the critical mass of a number of firms of different sizes, and of clusters around industry subgroups, access to increasingly expensive and

sophisticated equipment and technologies will become more problematical. We will also lack the ability to offer career advancement, (one company careers are a thing of the past), and will therefore increase the rate at which our intellectual capital moves offshore to seek ongoing development.

So what of government policy and the role it could, and should, play in fostering innovation? We need here to consider the question of speed. By the time market forces have worked their way through the system in Australia, the solution they deliver is likely to be obsolete – time and the rest of the world will have moved on. It's not so much an issue of having a level playing field, as being on the **same** playing field. Government policy is an essential tool to facilitate access to resources, to provide an accelerator mechanism to market forces, and to cover any gaps caused by market failure. The recently released *Innovation Action Plan* did recognise that solid economic fundamentals are a necessary, but not sufficient, condition for innovation. However, time is of the essence, and the near term fiscal certainty arising from further refinements to the definition of R & D for tax concession purposes, and from the out-years bias in the phasing of the Plan's expenditure, will come at the expense of longer term options.

Three specific areas of policy intervention warrant highlighting:

- First, the Federal/State government structure in Australia leads to inefficiencies which are net consumers of time in the innovation system. There is an onus on both the Federal and State governments to maximise the efficiency of resource allocation, the uniformity of the policy and legal environment, and the compatibility of infrastructure platforms – in short, to collaborate, and make it easy and economically efficient to get things done.
- The second area is education. There is broad agreement that our education system is an asset which needs nurturing and enhancing, and, without in any way wishing to detract from the importance of funding for secondary and tertiary education, the most formative period in the education process is the preschool, infants and primary stage. Everything we now know about plasticity of the brain confirms that the time up to about age ten is the critical period in establishing thinking patterns and in developing the ability to frame the right question. For example, the Australian Education Union recently quoted research which highlighted the value of children having access to preschool education: it estimated that $1 spent in the early years is equivalent to spending $7 later on. If ever there were an investment with an immediate and guaranteed return, it is that of increasing the number of talented people who enter and

remain in the teaching profession. In his Federation Address, the Prime Minister undertook to give this issue specific attention.

- Thirdly, there is the question of tax policy, specifically the treatment of offshore earnings and withholding tax effects, and also the personal tax consequences for talented individuals who relocate to Australia for a longer period of time.

Before concluding, I would like to comment on two issues from the broader social horizon – latent issues which we should consider, rather than allow them to build and compromise the next generation.

- The first of these is the so-called digital divide, which is very real and is preventing an increasing proportion of the population, not just from accessing wealth generation opportunities, but from access to basic income earning capability. An insidious effect of smarter technology is the deskilling of many jobs and consequent skill attrition among those occupations. Brains, like muscles, atrophy when not used.
- Secondly, there is the question of health and wellbeing. The new economy environment is accelerating changes in lifestyle, changes which are no doubt linked to recent disturbing statistics: one in four children in Australia is overweight, and one in five is depressed. These are frightening numbers. Should this trend continue, Australia will forfeit gains, made through innovation, to funding the substantial and long term management costs of conditions such as coronary heart disease, stroke, and adult diabetes – all of which obese children are at an increased risk of developing in later life. We need to recognise that our own health is the ultimate choice.

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RON JOHNSTON: I have entitled my brief presentation "Last Chance to Choose" to emphasise how many times we have made bad choices in the past, and that we are running out of time to get them right. But let me emphasise this is not a case of the suddenly fashionable "roonism". Indeed, as a country boy, I grew up to have a certain respect for the Hanrahans of this world. Because at least every so often **they** got it right! No, I suggest the provenance of my talk owes more to the Hans Christian Anderson fable of "The King with No Clothes".

The theme of the discussions being organised by The Sydney Institute during 2001 are focussed on an evaluation of where Australia stands 100 years after Federation. So it seems appropriate to begin with a little historical context. An inevitably selective fast-forward of Australian science policy and the commercialisation of ideas might run something like this:

- science emerges from its colonial era;

- the formation of CSIR in the 1920s and its subsequent significant contributions to agricultural and mining activity;
- two Nobel prize winners in the first 50 years
- the post-war boom, involving:
  - restructuring and growth of CSIRO
  - influx of foreign firms to establish manufacturing, but not R&D, behind tariff walls
  - advice from the British Government to cease development of a computer
  - Australian Atomic Energy Commission established to pursue nuclear research
  - Australian National University established to boost Australian research, and recruit Australia's brightest expatriates back
- an extended period of consolidation through the 1970-80s, involving:
  - increased funding and bureaucratic control
  - "the longest running show in the history of Australian science"- the 25 year effort to establish an independent advisory council for science and technology - ASTEC, which in the end lasted only 17 years;
  - but much was achieved in that time; among them, every major institution reviewed, a 150 per cent tax incentive for R&D, which saw industrial R&D rise dramatically for almost the first time in Australian history, to almost half that of the top OECD countries; and
  - the appointment of a Chief Scientist
- and by the end of the century, another four science Nobelists.

But at the end of all that, I believe our perspective can be best summarised in the words of the late Leon Peres:

> The simple fact of the matter is those who participate in the policy processes have not seen Australian science as having a great instrumental role in tackling the national problems that, elsewhere, have provided the major justification for national investment. Instead of turning to science and technology to relieve our national anxieties, it has been our habit to seek out economic, political and diplomatic bargains to gain access to the science and technology we have needed or to block threats from innovating foreign technology.

We have faced substantial structural challenges over the past 25 years in our science policy and economy, and fudged most of them:

1) When the need was recognised to extend higher education from a minority elite to a much greater proportion of Australians, there was almost no consideration, or debate, about the implications for the university-based research system. Was a mass system of higher education, itself so necessary, compatible with a quality research system which had

to be internationally competitive? After more than 15 years, we still have not grasped that nettle.

2) In the face of the changing nature of the global economy, and the many predictions of the declining value of commodities, and despite many inquiries and internal restructurings, CSIRO has evidently not been a driver in reshaping the Australian economy – successes here and there, but not a major force.
3) But then, where was the lead for them to follow? With a few exceptions, such as John Button's Partnership for Development Program, and occasional crisis-driven random interventions, there have been almost no attempts to leverage Australia's assets to greater effect, let alone direct investment in achieving an economy appropriate to the new challenges.

And then there is our own little battler, the Aussie dollar – the 48 cent, 34 pence, 60 yen dollar. I have taken to collecting pundit's explanations, which in the past month have included:

- the weakening US economy (previously it was the strong US economy)
- the strength of the US dollar
- weakness in the Japanese economy
- because the Euro is weak
- because the Euro is strengthening
- because Singtel paid too much for Optus
- and because the A$ is falling.

I think I understand that a falling currency can act as a temporary shock absorber of economic decline. But to consistently rely on your shock absorbers seems a poor approach to driving. And we are exhorted that it is good for exports. Yes – shoes to China, wheat to Iran. But is that what we want to base our economy on? What of the cost of all the technology needed to support our economy that we import? Let me remind you that our biggest import, running at $14.2 billion in 2000, was for electronic equipment. What of the chance of recruiting talented people, even Australians, from overseas?

Perhaps now that Don Talbot has informed us that we won't be able to afford to send a full swimming team to the world championships in Japan, and is encouraging Ian Thorpe to represent Australia in as many events as possible, the penny will drop. Ministers and governments are certainly responsible. But I would also like to draw attention to a number of trends within our public service which have also contributed to our problems:

- the Treasury-trained dominance of senior positions, leading to a lack of understanding of the nexus between technology and new business formation and an adherence to that dismissive slogan "industry welfare";

- the move to "generalist" administrators, downgrading the value of specialised knowledge and experience;
- "purchaser-provider" split, which may provide the basis for more efficient service delivery, but contributes little to determining whether the service is the one that is needed in the first place; and
- the view of the Minister as the chief customer of the Department, thereby replacing the challenge of "fearless advice" with the zero-risk philosophy so evident today.

All of these I believe are militating against an effective science policy. If you think I am being too hard, here is a brief catalogue of missed opportunities:

1) Barry Jones' Technology Summit in 1984 (yes when we were winning the America's Cup) where his view of the challenges of the information economy, and the steps needed, were dismissed as "boffin-talk", "unrealistic" and "out of touch".
2) The ASTEC Direction Setting Report of 1990, which recommended establishing a process to produce a White Paper on a four-yearly cycle to address major challenges and priorities was rejected as "too prescriptive".
3) The ASTEC Foresight project of 1994-96, which attempted to engage a wide range of Australians in setting preferred directions for the future, was rejected as "threatening the independent assessment of research priorities in our pluralist system". Most European and Asian countries have now entrenched such processes.
4) The reported response to the recommendations of the Innovation Summit Implementation Group addressing the promotion of an innovation culture as "too wanky".

Is it not reasonable to conclude that they, or we, just don't get it? We must acknowledge that the recent Innovation Action Plan has laid a basis for a much-needed injection of funding into the research system. But this only shows how much more is required.

1) Without an adequately funded infrastructure for teaching in universities, the knowledge capital of the future will simply not be generated.
2) In our primary schools, students are receiving a maximum of 30 minutes of science education per week, and
3) the recent Yellow Pages survey of innovation in the SMEs shows clearly that this business sector needs something different from what the Innovation Action Plan promised: improved access to, and lowered costs of, finance, skills, technology, research and research organisations.

These are the places to make choices. It's time to get it right.

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ANN HENDERSON-SELLERS: I'm really glad I'm an Australian. Fortunately, I'm well qualified because I love wild extremes. The weekend before last (9/10 March 2001), I was to be the "main event" at the launch of the ABC's new "Science in the Bush" enterprise. My science topic was "Whither Weather" and the selected bush location was Dorrigo atop the Bellingen valley in the NSW mid north coast.

I left Sydney for the bush on 8 March under a cloudless pre-dawn sky. By the time I was north of Newcastle, the Pacific Highway was closed at Kempsey. Calls to my mobile advised me that: in the township Thora, on the Bellingen River, all three town bridges had been washed away; the Pacific Highway is closed at multiple points between Grafton and Ballina; Bellingen is completely isolated with all roads cut, Dorrigo mountain is closed and will remain so indefinitely. All roads in the Bellingen valley are blocked or cut. Two days later, the SES were planning the biggest evacuation since Tracy destroyed Darwin in 1974 including the entire 11,000 population of Grafton. The torrential rain, gale force winds, burst and broken sewerage systems and a plethora of destroyed bridges and fallen trees were impressive. On Friday 9 March, the NSW Government declared a natural disaster for the whole area from Taree to the Queensland border.

No wonder our national poets write of the "land of droughts and flooding rains". Australia is a peculiar place. The Earth's smallest continent, but its sixth largest country. Our home is the only permanently inhabited continent entirely located in the water-dominated southern hemisphere and the most arid inhabited continent.

Variability and extremes are "normal" for Australia: its old landscape and strange flora and fauna are well adapted to these natural disturbances. Since European colonisation, just over 200 years ago, introduced plants and animals have devastated much of Australia's natural wildlife. The rich mineral deposits - Australia contains over 20 per cent of the recoverable deposits of minerals worldwide - have been exploited and European farming methods applied often to the detriment of the land. The massive groundwater reserves have been tapped and are being used much faster than they are being replenished.

There cannot be any other country which so badly needs, and can nourish with such richly diverse challenges, environmental innovation. Business recognises the need for new and applicable environmental knowledge. BP's Group Chief Executive, John Browne, says "Our goals are to have no accident; do no harm to people; and do no damage to the environment." The Australian Business Foundation said in 1997, "It is clear now that environmental industries, whether "clean" or "clean up", "green" or "brown", are a major growth opportunity for the future. Australia has good science in this area. Government authorities should not be afraid to encourage business into a faster rate of change." (*Australian Business Foundation*, 1997, p11.4).

Environment is not a niche market. It is predicted to be the next technology wave by John Elkington the British-born guru of triple bottom line accounting. Unlike the dot coms, environmental innovation will, must, succeed. The good news about "Greening for Gold'' is that the technologies, solutions and the underpinning knowledge and know-how exist just as certainly as the environmental challenges. This is not another "tech crash'' in the making, it has real assets, real revenue and real returns. The market exists, it is global and it will pay for the right, bright ideas. People are modifying the Earth at terrifying speeds. "Global change'' today means discernible differences in your environment in your lifetime. Clean air and adequate water are no longer "free'' but are negotiated about in international fora. Soil, trees and even the air we breathe are being modified by humans in the name of economic progress at rates that are hundreds, perhaps thousands, of times greater than their natural creation processes. There is now nowhere left to dump our waste and, worse, people on Earth are killing us. It has been estimated that 40 per cent of deaths worldwide are caused by pollution and other environmental factors. (Pimentel, D. – "Ecology of increasing disease: population growth and environmental degradation", *BioScience*, Sept. 1998). This is Australia's chance to get gold for being green. Clever innovative green: valuable tools and solutions for the whole world.

We all know that Australians prefer sport to politics and, heaven help us, politics to science. But when interest can be sparked in science Australians have been, and are still, prouder of their achievements in medical research and (astro) physics than in environmental innovation. There are, of course, individuals who are singularly remarkable exceptions, for example Martin Green, but by and large environmental solutions are neglected here as elsewhere in the developed world.

I shall paraphrase H.G. Wells tonight as I try to persuade you that human history becomes more and more a race between innovation (he said education) and catastrophe. If you feel that the claim of "catastrophe" is hysterical, remember that the water supplies delivered by aid agencies to the people of Bangladesh are so heavily contaminated with (naturally occurring) arsenic that half the country's population are being poisoned.

These are pending catastrophes and the result is a global environmental crisis. This is a unique moment in the earth's evolution: for the first time one species, humanity, has the ability to alter the global environment within the lifetime of an individual. The globalisation that has provided internet shopping and a single world economy has also brought our neighbours' waste to our front doors and our back yards. The environmental dimension of this century's global challenges is undeniable. The global commons are now polluted and local environments utterly changed from their native state.

The thesis I will explore this evening is that at precisely the time that businesses globally need clever solutions, enhanced community-wide understanding of the environmental challenges we face, places Australia in the vanguard of the new millennium's environmental solutions revolution.

Human enterprises around the world are increasingly being judged against the "triple bottom line'' that measures economic, social and environmental value added or destroyed. Businesses, originally designed to generate economic returns to shareholders at almost any social and environmental cost, are recognising that wealth creation cannot be conducted in isolation from human and natural impacts. Public sector and community groups are also striving to characterise their accountabilities in much more than financial terms including identification of holistic goals and "public good'' outcomes. The crises in economic development, globalisation of the knowledge industry and environmental sustainability form a challenge of planetary dimensions. This can only be answered by a clever country that correctly focusses. I believe the focus must be green and the goal will be gold, that is significant financial return and also real community benefits.

Businesses and industry demand knowledge. However, as the Australian Business Foundation pointed out in 1998,

> It is not enough, however, for firms to have access to knowledge. It is not enough to have an invention: firms must possess or be able to access in their environment additional factors which ensure commercial success. It is the use of these assets that determines whether the original innovator or imitators win from innovation.'' (Australian Business Foundation, 1997, p4.16).

The complementary assets which I believe we posses in Australia right now are profound environmental challenges that demand solutions. I will mention just two examples.

Salinity and groundwater quality

Consensus exists on the causes of Australia's critical salinity and water quality problems. The spread of agriculture has caused a replacement of deep-rooted native vegetation by shallow-rooted pastures and arable crops, and irrigation developments. These changes to the landscape either utilise less water or add more water than comes naturally.

The surplus of water generated causes rising water tables. Groundwater in Australia is commonly salty because the rate of flow in inland rivers is too little to export the meteoric input. The result is often rising salty water which renders land and associated infrastructure useless. The extent of salinity in the West Australian wheat belt is enormous with estimates that one third of the area will become affected. In the Murray Darling basin; by 2050 estimates are 3-5 MHa will be salinity affected, and 7-9 MHa waterlogged. The 1999 Salinity audit found that much of the salt comes from local groundwater

systems that flow to the tributaries of the Murray and Darling river system, and the predicted increase in salinity is expected to come from these areas not irrigation systems. The cost for the Murray Darling basin is put at $1 million per year for every 5,000 Ha visibly affected. The increasing cost will become $600 million to $1 billion per annum by mid century.

The extreme problems encountered in Australia have not been encountered overseas because of the unique geology and aridity of Australia and its very recent history of major landscape disruption. Most other places have found a new hydrological equilibrium, we have not. Australia has the largest water storage capacity per head in the world, but we squander this resource with wasteful irrigation practices.

Acid mine drainage

The problem is the oxidation of sulfides such as pyrite that produces sulfuric acid, sulfates and may mobilise heavy metals. The reaction generates heat, leading to temperatures in dumps up to 60 degrees or more in some dumps. Release of drainage from waste rock dumps and tailings dams can have severe impact on ecosystems in receiving waters, rendering water unfit for drinking, irrigation or stock watering which can also harm groundwater aquifiers. The timescales for release of pollutants from a site can be tens to hundreds to thousands of years. As open cut mines get bigger and bigger, so does the amount of waste rock produced and the greater is the potential for acid drainage to harm the environment. Acid mine drainage affects mines in every Australian state, in arid, temperate and wet climates. It has been estimated that in Australia alone there are more than 10 Mt of potentially acid generating wastes (waste rock and tailings) at over 60 sites.

In 1997, the cost of managing the wastes at operating mines in Australia over 15 years was estimated to be $AUD 1 billion. In Canada the total liability was estimated to be $CAN 2 - 5 billion. Then there is the rest of the world.

The management of sulfidic wastes is recognised by the mining industry as being of critical environmental importance. Globally, the industry is required to spend billions of dollars in addressing the issue. There are no “quick fixes” and many of the “simple solutions” being sold by consultants worldwide are now being found to be inadequate. ANSTO has undertaken world-class research in the field for many years and has established an outstanding reputation for its scientific excellence, innovation and an in-depth knowledge of the issues facing the mining industry today.

Australia is the only country to have provided a Research Partner to the International Network For Acid Prevention. We have developed cheap and robust instrumentation to enable companies to determine the extent of the problem in their wastes, to quantify rates of pollutant

generation and to quantify the effectiveness of any control measures. The instrumentation includes techniques for measuring pore gas oxygen concentration profiles, temperature profiles and water infiltration rates.

We developed all these very early on, they were novelties then but are now considered to be standard measurements in any sulfidic waste rock dump (where a company is serious about addressing the issue). More recently we have been the first in the world to be able to measure directly the oxygen flux into dumps as a measure of overall acid generation rates – our oxygen fluxmeter. It is a low-cost portable instrument. This is an innovative product that we expect to become a "standard" measurement, as others of ours in the past have been.

We are currently working on a device that will enable operators to quickly and cheaply decide how waste from the mine pit needs to be handled, whether it is going to be a problem or not. This is likely to become a "must have" device at every open cut mine that has sulfidic wastes. Real innovation – no-one else has anything even close.

The Australian Bureau of Statistics (ABS) national balance sheet includes data of environmental relevance. To date, the way in which these data might be used to inform decision making at a national or state level about using or safeguarding natural assets has not been fully explored. For example, sub-soil assets are valued by the ABS by reference to established market values for those commodities, in combination with projected timing and costs of extraction. This information might influence decisions about the exploitation of those resources.

Australian environmental solutions

Australia was first to establish a national greenhouse office and NSW the first government in the world to pass laws permitting carbon credits trading. The potential to establish a million hectares of new plantations in NSW over the next 10-15 years is worth $3.8 billion to the state government and also generates 20,000 new jobs. On the basis of the federal government's renewable energy tax of $44.40 per tonne of carbon dioxide, State Forests' Kyoto-compatible carbon bank is today worth $66 million.

Salt-gradient solar pond technology is being developed by a Melbourne group in collaboration with farmers at Pyramid Hill, Northern Victoria. As water, salt, solar radiation and flat land are all readily available in much of Australia and given that there is a valuable use for the thermal energy, a solar pond becomes attractive as a source of renewable energy. Salinity management could, employing this technology, become a positive economic input for the farmers of Australia.

The salt solar ponds are one Aussie solution; another is an innovative calibration technique. The problem is salt mobilised by groundwater flow and the conduits through which recharge and salt movement occur are

heterogeneous. The rate of water and salt delivery at present and under a range of future farming or alternative land use scenarios is virtually unknowable. The best solution seems likely to be close matching of improved land use practises with specific landscapes. This can only be achieved when we fully understand the salt delivery system.

Radio tracers have traditionally been used in multiple bore hole studies to determine the intervening characteristic bulk aquifer properties such as hydraulic conductivity. A new single bore hole radio tracer technique has been devised that potentially will provide high resolution (10cm) hydraulic conductivity measurements together with flow direction and velocity. At the heart of this new technique is the difficult conversion of measured count data to tracer concentration and distance from the bore. ANSTO will utilise modelled differential attenuation by aquifer media of radio tracer decay spectral peaks to address this problem. Existing single bore hole gamma-gamma and neutron activated gamma logging technology will also be developed in collaboration with CSIRO for application to groundwater problems.

In generating environmental solutions, as in so many other endeavours, systemic thinking and holistic approaches deliver magnificently greater benefits than single discipline measures. I would like to share just two such examples with you. They both come from a small company in Victoria called “Earth Systems”. The first is called a “Neutral Barrier”. The technology is aimed at controlling fluid flow in a wide variety of permeable rock or unconsolidated material. It permits the in-situ formation of sub-surface containment structures or barriers to impede the migration of specific gas and water flows (polluted or otherwise) into the wider environment. The technique involves selectively sealing porous rock with mineral carbonates such as calcite. By manipulating the interaction between calcium hydroxide and carbon dioxide, calcite can be induced to precipitate in the pore spaces.

Potential applications of this new technique are numerous, and all carry the possibility of environmental benefit. From problems such as containing groundwater pollution plumes to controlling coal-bed gas emissions these neutral barriers appear to have a range of potential applications.

The really clever part is that these novel barriers require the consumption of carbon dioxide to be formed. At some sites this gas is produced as a by-product (eg. power industries, chemical industries, waste management industries) and capturing it for remediation purposes will provide locally significant reductions in greenhouse gas emissions.

The second technology has been developed specifically for preventing and treating acidic and metal polluted drainage from enclosed broken or fractured rock masses such as abandoned underground coal and metalliferous mine workings. It is one solution to the acid drainage problem I described earlier.

The new technique involves manipulating the atmosphere in underground workings to ensure that sulphide minerals remain stable, without impeding the flow of water out of the workings. By utilising a mixture of carbon dioxide and methane, not only is it possible to halt sulphide oxidation and acid generation, but it is likely that new sulphide minerals will form in the accumulated drainage water.

Successful implementation of this novel Australian technology is therefore expected to rapidly improve drainage water quality emerging from underground mine workings, as well as reducing greenhouse gas emissions.

In Bangladesh, Thailand, India, Taiwan and China, Australian environmental solutions are harnessing two of nature's most freely available products – sunlight and air – in a new approach to treating the highly toxic element, arsenic. The cancer risk from arsenic-contaminated drinking water led the World Health Organization to revise its recommended safe limits for arsenic in 1993 (from 50 parts to 10 parts per billion) and since then has led countries including Germany, Japan, Australia and the USA to revise or review their own guidelines.

The new Australian technology renders the arsenic less toxic, insoluble and safe for disposal in landfill. Because air is used for the oxidation process instead of chemicals, there is no adverse environmental impact and costs are cheaper than for existing chemical treatment systems. The other holistic aspect is that the Aussie process is essentially very simple and can thus be adapted to the village situation. It uses interconnected troughs, just like horse or cattle troughs, and sunshine. The "low-tech" process is virtually free.

Australian knowledge leaders and managers tend to blame others for their lack of success in nurturing and retaining research and teaching programs relevant to environmental sustainability but much of the responsibility lies within the universities. However, there is very little expression of support for environmental issues corporately or by CEOs. The ARC has failed to persuade reviewers, funding panels or applicants that interdisciplinary problem-solving of benefit to Australia's future will gain support. In a land rife with environmental risks and hazards, it is puzzling that Australia's knowledge industry has paid, and continues to pay, so little attention to environmental sustainability and fails to support its green gurus.

It is now widely perceived that environmental technology is the "next wave" of science solutions for business that is already replacing "high tech". For example, Hugh Morgan, Managing Director of Western Mining Corporation, forecasts that world trading patterns will change substantially over the next decade as the international business community discovers and embraces solutions to environmental challenges (*Financial Review*, 20 October 2000).

The globalisation of information affects the knowledge industry more profoundly than any other. Knowledge (new, old, valuable and tarnished by poor presentation and misrepresentation) abounds on the world's media and the world wide web. Any fool can find it. Fools and wiser competitors have found it and packaged it as environmental knowledge dissemination. They are direct competitors for Australia everywhere. But we have an edge. We face more environmental challenges than our competitors and we face them with an excellent background of clever ideas, knowledge and know how.

Our chairman this evening, Robyn Williams, has been working with the Australian Academy of Sciences and others to try to lift the national and political level of awareness of science. I admire and support these efforts. But think guys, there's an easier way. Let's garner support for science and innovation from a known source.

The Australian Bureau of Statistics released a report in November 1998 on environmental issues and perceptions. Many people expressed concerns about environmental pollution citing, particularly, urban air quality and water pollution. Overall, 71 per cent of Australians were found to be concerned with at least one specific environmental problem, compared with 68 per cent in 1996. The groundswell of support is actually growing.

Refillable containers are the most widely used environmentally friendly product found in 61 per cent of our houses; 48 per cent of us use recycled paper. Almost 20 per cent of us choose to buy organically grown fruit and vegetables. Australians are prepared to invest in environmental solutions right now.

Sadly we are not being led well. A survey in 1998 of the 37 Australian universities showed that just four had environmental statements; only one mission statement mentioned the environment and only two CEOs referred to environmental issues in their formal statement in annual reporting. None of Australia's vice-chancellors have new knowledge acquisition skills in environmental sustainability and this is also true of 80-90 per cent of the councillors of universities.

"Greening for Gold" is not a 2000 slogan left behind by SOCOG. It is a new direction for Australia's innovation. We have a resource here in this land which no other nation possesses. We have droughts which remove rivers from landscapes and floods which sweep away arterial highways. We have groundwater crises and extreme erosion. These are unique attributes for any nation wishing to make gold from green.

The Prime Minister's message on the publicity flyer describing the January innovation statement, *Backing Australia's Ability*, begins with the words, "Australians have always been a resourceful people. Innovation and adaptability to our often hostile environment are key features of Australia's history.'' Undeniably correct. My question is how do we ensure that they are *synergistic* characteristics of our nation's

future? *Backing Australia's Ability* is an investment plan worth $2.9 billion over five years. The two *named* world class centres of excellence are to be in Information and Communications Technology and Biotechnology claiming $130 million and $46 million respectively over five years. Good choices no doubt, but where is the Environmental Technologies centre? Australia must find solutions for its very pressing environmental challenges, as it always has. Surely a national investment which also backs our environmental abilities is worthy of consideration?

Photo – David Karonidis

Susan Varga Anne Coombs

When *Broometime* (Hodder Headline), Anne Coombs' and Susan Varga's meditation on that remote Kimberley town, was published in March 2001, an extraordinary controversy ensued. Some Broome residents called for the book to be pulped. Just what was going on? And what took Anne Coombs and Susan Varga to Broome to live and write for almost a year? They spoke to The Sydney Institute on Monday 2 April 2001, two weeks after the release of *Broometime* and two days after its publication withdrew it from sale. The book has now been reissued.

BROOME: FRONTIER

TOWN OR THE FUTURE SHAPE OF AUSTRALIA?

Anne Coombs & Susan Varga

ANNE – Broome was one place where the White Australia policy never really applied. The pearling industry needed cheap labour, and there it was right at the door. They came from Manilla and Koepang, Singapore and Java. Not the teeming hordes that the founding fathers so feared, just a trickle. But a constant and reliable trickle. The Asiatics as they were known in Broome, a generic term that encompassed the Malays and Filipinos and Timorese who crewed the pearling luggers, the Chinese who ran the shops and brothels and worked as cooks, the Japanese who dived for pearlshell. Most of these men were on short-term contracts. Sometimes they managed to stay on, often they formed liaisons with local women and had families. These women were themselves often the result of cross-cultural liaisons more often than not, they were half-Aboriginal, half-European, or maybe they themselves were the daughters of Asian men. The intermingling of the races in Broome has been going on for generations.

In Broome, the faces in the street are not those described by Henry Lawson. They are Broome faces, so many races in any one visage that it is impossible to tell just what the mix might be. After a while, it ceases to matter. They are just Broome faces, and the history of the town is written in them. People came from all over and made a viable life for themselves in the town. They married (either formally or informally), they had families, many of them prospered. Their descendants are now the town's leading citizens. They call themselves Broome-ites, in part because they don't know what else describes them. Some who are reconnecting with that part of their heritage that is Aboriginal might call themselves indigenous. Certainly those whose mothers identified as Aboriginal might do so. But just as many recoil from such a simplistic description of their make-up.

Questions of identity are vexed in Broome, and have become more so since Native Title. There's tensions between those who have always been seen as Aboriginal and some of those who passed for many years as Asian. Who are the traditional owners of this place where for

so long thousands of people from the four corners of the earth have mingled? Indonesian fishermen have been fishing these waters long before Europeans ever discovered it. The intermingling of the races has been going on for who knows how long?

So how do you go into a town and tell its story? Such a thing is never easy but a place like Broome requires particular things of you. For a start, Europeanness cannot be taken for granted as it can be in the rest of the country. It is perhaps the place in Australia where the grip of the white man's hand has been least certain. These days, superficially, Broome looks like a white town but you don't have to be there long before you begin to feel that the real life of the town is going on elsewhere. You might get glimpses of it but there's a level that you can't reach. You are the white outsider. So how do you paint a portrait of such a place? For me, regardless of whether it's a city like Sydney or a town like Broome, the only way is to follow personal stories, to see where they intersect, to follow the threads that link one person to another, one interest group to another. And hopefully at the end you will have a map to that place, that society. Not a complete map but at least something you can make sense of.

In a town like Broome, with so many overlapping circles and so many sharp divisions, it seemed to us that there could be no definitive right way to map the place. It didn't lend itself to an omniscient narrator who would lay down the law about what was what and who was who. Anyway, maybe the days of the omniscient narrator are over. He or she belongs to a time when the primacy of one's own cultural perspective was not only not questioned, it wasn't even thought about.

But you can't erase your own cultural perspective, you can only be upfront about it. That's what we tried to do in Broome. *Broometime* is a Eurocentric book. We couldn't avoid it; that's who we are. But we show ourselves floundering, because Eurocentrism ill-equipped us to deal with many-cultured Broome, with people who take a multicultural view naturally, who have developed their own culture as a result. For us, it was like walking all day with a heavy suitcase in one hand and knowing that, anyway, you've brought all the wrong clothes.

The only way to tell the story of one place, but a very diverse place, is to tell it from many different angles and in many different ways. That, in the end, is what we tried to do. So there are a handful of principal characters, whom we follow through the course of the book and through whom the reader gets a picture of what life is like for those individuals. There are interviews with important figures in the town; there's reportage of key or signature events that seemed to "say something" about the town; and tying it all together are our journal entries, our subjective and highly personal reflections on the people and events, on our reactions to them and our reactions to each other. Because that's the other thing, the book is written in two voices: Susan's and mine.

Just as there could be no omniscient narrator passing judgement, nor could there be a single authorial voice when we are two quite different people. The sort of generalisation and homogenisation that goes with globalism is anathema to what is most human in human beings – our desire for close connections. Is it any wonder that people are again drawn to those things that are intensely local? To evidence of the ties that bind us? To the importance of empathy? *Broometime* is an intensely personal book – we've been very open about other people and about ourselves and we make no apologies for it. Because it's when people reveal their flaws and vulnerabilities that we most understand them and can learn from them. In a nutshell, this is what we're saying in this book: Here is a corner of the world you may not know about. What can we as Australians learn from it?

SUSAN – In 1998, the year when Hanson was scaring liberals and Liberals, we decided to go and live in Broome and write about it. We did not go there with any particular ideological intent, just with a vague notion that the microcosm – a small town perched on the edge of north-west Australia – might well reveal something about the macrocosm, Australia itself. We knew that in some ways, Broome was unique, especially in the extent of the racial mix and the length of time – more than a hundred years – that intermarriage had been taking place. But our hunch was that that very mix, unusual as it is now, could show where Australia might be heading 100 years from now. In short, that tiny Broome could be a blueprint for our future.

One reason we chose to look in-depth at a small country town was that we thought we could tease out the strands and interconnections with more ease than in a city or a big town, that the exercise would be simpler. How wrong we were. Broome is a complex place; multilayered as well as multiracial and multicultural. But it is complex in an exciting, vital way that makes you want to understand it better. One layer peels away another, and another. Of what does this complexity consist?

First, of course, the races themselves – the number of mixes and permutations within one family. So one of our "characters", the delightful matriarch Pearl, is one quarter Scottish, one quarter Aboriginal, one quarter Chinese, one quarter Japanese. She married a Japanese pearl diver and her boys, named Duane, Craig, etc, look pretty Japanese and sound and act totally Australian. And Kevin Fong, who is now the Shire President, is part Chinese, with a dollop of Malay and Torres Strait Islander. While Vanessa Poelina is part West Timorese Koepang and part Aboriginal. And so it goes on, not just intriguing racial combinations but cultural as well.

Another factor making for complexity are the number of Aboriginal tribal groups in the Broome area, the family interconnections and rivalries, and how they in turn affect the links to land and language. Broome has a very interesting organisation called

Rubibi, which tries to encompass three different groups, the Djugan, the Goolarabooloo and the Yaruwu as one negotiating body for the area. But that does not take into account the Nyul Nyul and Bardi and others who are from nearby areas, many of whom have settled in Broome. These groups are also battling with various degrees of success to retain or revive their languages, to have them taught in schools.

Language in itself is a complicating factor. Among the languages in circulation are High English, Broome Kriol which is Malay based, Kriol from other parts of the Kimberley which is English based, several Aboriginal languages, not to mention the languages of some 42 nationalities represented in the population of Broome. Which brings me to the complicated white tribes of Broome; from the Broome "aristocracy", the remnants of the old pearling master families and big landholders, to the investors in the relatively new cultured pearl industry, to the tourist operators and hotel owners, to the artists, photographers, writers and hippies who have since the 1960s been coming to Broome to live, to all the tradesmen and others cashing in on the tourist boom, and the army of itinerants who pass through Broome in their thousands, particularly in winter. And then there's the influx of ordinary middle class Australians who, since the advent of air conditioning and reticulated water to keep gardens perpetually green, are threatening to turn the Broome suburbs into replicas of suburbs everywhere. Their increasing domination in Broome only highlights the degree of dislocation and disempowerment within the Aboriginal community. But you also see, everywhere in the town, numerous organisational and individual efforts to remedy that situation. Broome is full of impressive Aboriginal organisations.

Broome was once predominantly a black town; this is no longer the case. Its character is changing. Yet when you subtract the itinerants, the tourists, and those who have been in the town less than five years, the mixed race and black population rises to close to 80 per cent again. The very isolation of Broome also adds to its complex character. It has its share of country town insularity and sleepiness. But there is also a certain intensity born of that very isolation, and a cultural flowering born of necessity. Broome has strong religious influences, the oldest and still the most powerful being the Catholic Church. There are still remnants around the Kimberley of several Catholic missions, and much of the mixed race old elite of Broome is strongly Catholic. It is a place, where for better or worse, Catholic culture is intertwined with local culture.

It is this complexity and texture, of which I've given just a sketch, which makes Broome a fascinating place. And we as writers, inevitably Eurocentric writers, can only begin to guess at the further cultural and political complications within the texture of Aboriginal life. Let me give you one example. One of our "characters" is Mary, a Yawuru woman in her thirties, struggling to establish a culture centre for Broome. We

think we gave a warm, attractive, hopefully sensitive portrait of this remarkable woman. Yet Mary was initially upset by our portrayal, for reasons that had nothing to do with white readers. It is how she will appear to her elders and to other power brokers within the black community which worries her. Our assumption, that a sympathetic portrait of her – which also exposes our own ignorant gropings towards indigenous ways of thinking – would meet with her approval, was quite wrong. Quite different things matter to Mary.

ANNE – To give you a taste, I'll read a small section about Mary.

> Mary Tarran's skin glows as no white skin glows, however healthy. Everything about her has a shining quality. Her bright friendly eyes, the thick black hair pulled back in its bun, her teeth against the bruised colour of her lips.
>
> Mary spent a lot of her childhood on Kennedy Hill. She is a Broome girl, through and through. She has an easy manner, a swinging gait that invites one to follow. So I did. An incredible, confusing couple of hours. My way of looking at the world is so different from hers. It is not so much a matter of colour, but of experience. She has been forced to make some accommodation with my world; I am in total ignorance of hers.
>
> Listening to Mary, I could relate to her smile, her humour. Language was no problem (she is a convent-educated girl). But when she started to tell me about her work with the culture centre, and to touch on Aboriginal politics, I was aware that she was deeply resentful and conflicted. And I was equally aware that I had none of the knowledge that I would need to understand what was upsetting her. It wasn't just that I couldn't get her to start at the beginning and tell me in a logical fashion what was going on. It was that her mind had been trained in a certain way and it wasn't a way that I could hook into. Every now and then she would slip into a path that I could follow; would say, "This is going to happen." or "We are having a meeting with so-and-so" and I would latch on to these snippets and try to build up a scenario. And yet in her restless movements, the moving of papers from side to side of the desk, her agitated eyes, which kept throwing me quick glances – expecting me to understand more than I could understand – I could see a whole sea of events and conflicting interests and complicated relationships that I am not privy to.
>
> But despite this, I have a feeling we can be friends. And I want to keep going back, keep trying. Is the incomprehension mutual, I wonder? I doubt it. She has had thirty-eight years of sussing what it is that whitefellas want and expect of her. I didn't get any sense that she finds Europeans problematic. The problems that are bedevilling Mary at present are to do with her own people. They are the source of her frustration. Although as yet I don't know why.
>
> When Susan and I first decided to come to Broome, I expected that one of the most challenging things would be confronting my fear and ignorance of Aboriginal Australia. We live in a part of the country where one almost never sees a black face; where the closest I, at least, have come to issues of aboriginality is the distance between the lounge chair and the television set. I have been comfortably, if not unselfconsciously, an armchair liberal.

A few days after we arrived, I was at the drive-in bottleshop one night and an old Aboriginal woman, the worse for drink, came up to the car and hung on the door and said "Can you give me a lift home, luv? Can you?" and my first reaction was fear, and my second, guilt. I didn't want to give her a lift home. She was unsteady on her feet and bedraggled and reeked. I was saved by the attendant who said to me, "Take no notice, the bus will be here for her soon." And I was relieved. But still the guilt. "Will she be all right?" I asked. He nodded, "The bus'll be here soon."

That old woman could have been Mary's mother, although I know it was not. Her mother is the much respected Cissy Djiagween, one of the elders of this area. Mary's is an important family. Her grandfather, Paddy Djiagween, was also Mick and Pat Dodson's grandfather. Paddy Djiagween grew up at Beagle Bay, became a tailor and lived to be 106-111 according to his tombstone. The inscription on his headstone reads:

The sun rises, wind blows, grass grows
The tide comes and goes
No one can ever take your land.

Many of the Aboriginal people one sees around town do not live in Broome. Often they come into town for a day or two from outlying communities, to visit the hospital or a friend in gaol, or to shop. They travel many hours in small white minibuses, or on the back of utilities. During the day they sit in the park to rest and refresh themselves. Isn't that what parks are for?

But tourists see black people sitting in a park and you can see them avert their eyes. They mutter, "lazy", "layabouts", "drinking". Even if there is not a bottle in sight, even if the people are just sitting there under a tree out of the heat of the sun, talking to each other, enjoying the day. The sight of black people sitting in a public place offends. "Don't they have homes to go to?"

As late as the 1960s there was still a curfew to stop blacks from coming into town at night. Yet who was considered "black" at that time? Chinatown must have been full of people of mixed Aboriginal and Asian blood. I wonder how the mixed race people were identifying then? And to what extent that has changed. All the talk I hear now is of "indigenous" and "non-indigenous". What of all those in between?

There is a small settlement of Aboriginal housing on a sandhill above Chinatown, called Kennedy Hill after one of the early pearling masters. In the late '70s the Shire Council tried to wrest it from the people who lived there because they wanted it for tourist development. It is one of the few elevated spots overlooking Roebuck Bay. I've been told there are ancient middens on that hill – it has always been a camping place for countrymen. These days most of the residents are Thursday Islanders. They originally came over to work in the pearling industry.

The Shire didn't get Kennedy Hill and the settlement is still there, but a bit further along a big hotel was built – the Mangrove, a sprawling two-storey place in off-white brick, with a wide grassed terrace at the back that overlooks the bay. Tourists walking into Chinatown from the Mangrove pass by the middens on the top of the dune, then the dusty unpaved streets of the Kennedy Hill settlement, before descending into the commercial hub of the town.

So what sort of book have we written? Is it a book of gossip? *Broometime* is certainly full of lots of people's opinions on a large range of subjects. This was done because we chose to tell the story of Broome through the mouths of the people who live there. Through character and situation, not polemic.

The reaction to *Broometime* from people who are in the book has highlighted an interesting cultural difference that we had perhaps not taken sufficiently into account. We've spent quite a lot of time on characterisations of our main people, in order to give the reader a sense of them. This doesn't seem to worry the white characters unduly – most see it for what it is and on the whole are prepared to accept it. But some of the Aboriginal individuals are clearly uncomfortable with this. I think this is largely why some feel they have been "violated" – not because we've been particularly intrusive, but because we have sketched their character. A candid snap, not a formal portrait with them dressed up and looking perfect.

One of our main crimes appears to have been that we talk openly about things that people don't want to acknowledge, like the multifarious racial and cultural threads that run through Broome families, the difficulties facing indigenous organisations, black and white politics within the town and people's divergent opinions about all these things. So have we been culturally insensitive? We tried very hard not to be. We have not revealed any "secrets" but it appears that unintentionally we erred in two matters. Only one of these seems to me to be a case of genuine cultural misunderstanding. The other, I can't help feeling, has been brought up not so much because we transgressed a cultural boundary but because the family is upset for other quite different, but related, reasons. Nonetheless, it was never our intention to hurt any one and in both these cases we have said repeatedly that we are sorry.

When white people attempt to explore or discuss indigenous issues, the bar is set very high. It is almost impossible not to offend someone. There are a wide range of viewpoints within Aboriginal Australia on almost any subject, it doesn't matter what you say, some indigenous person is going to say you got it wrong. It goes with the territory.

But does this mean that we whitefellas should just stay away from the subject? We wanted to write about issues of Aboriginality and identity in Broome so that white readers in other parts of the country would gain understanding and empathy. We felt that if you let the reader really get to know someone you could change hearts and minds. And that is already happening. Before the book was taken from the shelves we were beginning to get feedback from all sorts of readers who felt their eyes had been opened, their minds changed. But that larger purpose has been lost on the more vocal inhabitants of Broome. It certainly seems to have been lost on most of the white media who, typically, have been interested only in the controversy and haven't even looked at the issues. Of course if you

write this kind of book you are bound to ruffle feathers. But the reaction seems to have been out of all proportion to what is actually in the book. The legal technicality that has led to the book's pulping has come late in the day, after several weeks of concerted effort by some people to find a way to stop the book. The book has not been pulped because of any cultural transgression or because of libel, but because of two possible breaches of a WA statute. No charges have been laid. There is a long and sorry history of books being pulped, sometime unnecessarily, never to be seen again. We hope that doesn't happen to ours. We hope the publisher will be courageous and reprint *Broometime* as soon as possible.

SUSAN – The controversy that has engulfed this book has been deeply distressing to us, but tonight we want to discuss some of the issues it raises. The two accusations that have been most commonly levelled are that we used private conversations without permission and that we abused people's trust. The private/public issue is indeed a vexed one and we have no answer as to where the line is crossed. One thing is sure – that in the non-fiction arena if writers consulted their subjects as to what should or should not be written, if they asked them at every turn, "Can I use what you just said?", whether it's on tape or part of a casual conversation, no books of interest or worth or originality would ever be written. It would be one vast bland official record – an endless whitewash. A major and important function of writers is to tell the truth as they see it. A writer must move continually between triple obligations: to the reader – to surprise, edify, instruct and delight; to the subject – to be fair and generous and insightful; and to herself – to listen to her own true voice and reproduce that true voice on the page.

As to the cries of some people in Broome that we have betrayed their trust, we say that their notions of trust are superficial. We made perhaps four or five real friends in Broome – in the sense of being invited to their houses, being helpful and friendly to each other on a more or less regular basis. All those people are still in touch with us today and in terms of warmth, even though they may not have been utterly delighted with everything that was said about them on the page. With others in the town, we met with friendliness, yes, willingness to talk, but not friendship. We met them as writers interested in the town. Everyone knew who we were and why we were there. Some avoided talking to us at any length just because they knew we were writers. Many spoke with insufficient care, especially on tape. We often edited them to avoid embarrassment or unnecessary exposure. We were more careful than they know on their own behalf.

At another level, they must take responsibility for their own actions. Writers are per se untrustworthy. Their profession is to watch, listen, observe and analyse. They cannot go around with signs saying "we are writers" on their heads. We spoke to no illiterate or totally unsophisticated people. Yet many have expressed surprise at what we have done – which

they might have guessed if they'd thought for a minute, or read our previous books, which were given as gifts to quite a few of them. At least some of them are being disingenuous, running for cover. We believe that these accusations, genuinely felt as some of them are, in fact, a mask for the real issues – what you are allowed to talk about and how you are allowed to talk about it.

Imagine this scenario – we travel to a town on the Orinocco in deepest South America, or any other faraway and exotic location you care to name. We stay there for nine months. We talk to the locals, formally and informally, observe the local customs, politics, personalities and scenery and go away to write it up. There would have not been a whisper of indignation. It's because we've written about our own country, our own people, that this controversy has broken out. Or imagine this scenario – we write about our own country but in the usual polemical terms. We might do a tract on multiculturalism, or a careful analysis of race relations that will offend no-one because it is shrouded in double-speak or academic jargon. Or a tourist› book on Cable Beach, the colourfulness of Chinatown, etc with dollops of safe history from Broome's past. Or an anthropological tome where everything is carefully checked for its academic correctness. We did none of these. Instead we wrote a highly personal book, as honest about ourselves as about others, in which we record our own subjective observations of a town, thus building up what we hope will be a complex and layered portrait. Just about everyone outside Broome, and some within, who have read this book through, sees it as a gentle, generous, lively portrayal that has captured the place well.

Another rather depressing aspect of the reaction to *Broometime* is the lack of awareness among many readers of literary genres. *Broometime* largely falls into the long and honourable tradition of travel writing in which the author plays a subjective part – for example, Freya Stark, Paul Theroux, Colin Thubron, Dervla Murphy, even Bruce Chatwin. The writer goes to a place or places, observes, talks to the locals over dinner and elsewhere, and goes away to write about it. Another genre of which *Broometime* is part – in this age of cross-genres – is that of fly-on-the-wall non-fiction, with a bow to New Journalism. Janet Malcolm and Truman Capote are two exponents of this style of writing, whereby the reader feels they are there, inside a situation rather than outside it. Anne's first book, *Adland*, is part of that tradition. It's a tradition of intimacy, honesty, detail – and one fraught with ethical dilemmas and risk taking.

Another literary device of which there has been considerable ignorance is the journal. We chose to write parts of this book in the journal style for various reasons, yet the whole book is seen by some as a diary when it is actually a combination of journal, set pieces, long interviews and reflections on people, politics and place. In the wash of

all that's happened with this book over the past two weeks we admit to a certain naivete – that we had not anticipated the degree of volatility of our subject matter. We didn't anticipate the volatility of reaction if we talked in print, and outside the expected parameters, about race relations, about small towns, or indigenous politics. This is a risk-taking book. In Melbourne last week Robert Dessaix called it a cheeky, even daring book, that was, however, never malicious.

When you take risks, you may well transgress. But without transgressive daring books, where would literature be? Particularly when you write about indigenous people, their oppression has been such, the sensitivities as a result so acute, that you almost inevitably give offense. But if your aim has been, as ours has been in this book, to talk about them in a real way that will allow white Australia to empathise and sympathise and learn, then that is a risk worth taking.

What is most alarming about this whole business is the level of debate. In Broome, some people are very disappointed with us. We are also intensely disappointed with some of them. We have seen people running for cover, distancing themselves from what they said in taped interviews, denying that such interviews took place; we have seen political grandstanding, shoring up of constituencies, and whipping up of hysteria when many have not bothered to read the book. Intimidatory emails have been sent to publishers, booksellers and individuals around the world. At times it looks suspiciously like a witch hunt. We have been called variously, lesbian spies, sea gulls who shat on the town, rapers and pillagers, etc.

As for much of the media, there has been a mind-numbing trivialisation. Did we really mention the knickers of a local councillor? What about the cross-dressing lawyer? Were conversations around a dinner table really recorded? Was there a secret tape recorder? So far, too, with the literary world. Private commendation, public silence. We hope that soon changes as the content of the book and the issues around it become better known.

Most alarming of all is the political aspect. It's as if we had never written a book that canvasses, among other things, multiracialism, multiculturalism, local and national politics, the internal workings of small towns, questions of isolation, and the influence of the Catholic church. The debate is stuck in stale polemical stalls. No one seems to want to go down new, more subtle paths to look afresh at what is bedeviling this country. What price reconciliation?

For this country to move forward, the sort of book we have written could prove useful. We'd like to see many more like it – better ones maybe, but books prepared to look honestly at Australia as it is now. It's not the kind of book that should be pulped. It should be celebrated. We hope one day it will be.

1. Ian Harper, John Quiggin
2. Robert Maher, Lindsay Tanner
3. Penelope Nelson
4. Susan Varga
5. Margaret Hart, Josephine Tabbakh
6. Jane North
7. Susan Balint, John Balint
8. Anne Coombs
9. Virginia Patterson
10. Vivien Dunne, Bruce Flood, Karl Wolf, Derek Dunne

Photographer: David Karonidis

Ian Harper

John Quiggin

The setting up of the Foreign Investment Review Board and the creation of the "national interest test" for foreign acquisitions and takeovers, suggests that successive federal governments believe foreign investment is good for us. The Melbourne Business School's Ian Harper believes that it is appropriate to have a process in place to check the national interest. But he also feels that there is little point in complaining about foreign takeovers "when foreigners pay for the right to control the enterprise when they take it over". John Quiggin, Australian Research Council Senior Fellow, ANU, and occasional columnist for *The Australian Financial Review*, is concerned that Australia might become a branch office economy. In an exchange of ideas, they spoke for The Sydney Institute on Tuesday 3 April 2001.

FOREIGN
INVESTMENT – WHAT IS AT STAKE?

Ian Harper

How do you decide if a foreign acquisition or takeover is contrary to Australia's national interest? After all, that's what the *Foreign Acquisitions and Takeovers* Act obliges the Federal Treasurer to decide. The decision cannot be made by the government but rests with the Treasurer alone. The *Act* does not even define the term "national interest", which places an added burden on the person who must decide the issue.

Note how our law is framed. There is, as I point out in my report for Shell, the "presumption of innocence" attaching to foreign investment. Foreign investment is, for the most part, regarded as being consistent with Australia's national interest. That's why the law is couched in the negative. The test to be applied by the Treasurer is simply to check whether, in a particular instance, foreign direct investment might be contrary to the national interest.

So the Treasurer is not obliged to find that a particular proposal of foreign direct investment is *in* the national interest. The test requires the Treasurer to satisfy himself or herself, having taken advice from the Foreign Investment Review Board (FIRB), that a particular proposal is *not contrary* to the national interest. You will appreciate the distinction between the two.

If the Treasurer finds a proposal to be contrary to the national interest, the *Act* empowers him or her either to block the proposal outright or to approve the proposal subject to conditions aimed at neutralising those aspects of the proposal which the Treasurer finds objectionable.

That said, it would be helpful if the *Act* provided a definition of the national interest but it doesn't. If you found yourself in the Treasurer's shoes, where would you start? I want to consider three definitions of the national interest tonight and, like Goldilocks, I'll find one of them too cold, one of them too hot and the other one just right!

My first definition of national interest is "national legal sovereignty". So, by this definition, a foreign takeover would be

contrary to the national interest if it compromised our national legal sovereignty; in other words, if it compromised Australia's "power and dominion" over assets within our territorial limits.

In my view, this definition of the national interest is "too cold". No foreign acquisition could possibly fail to be approved under such a test. The sovereignty of the Australian parliament within our territorial limits is never compromised by foreign acquisitions or takeovers. Foreigners operating on our territory must obey the law. So if the national interest were to be defined as national legal sovereignty, there would be no point in having the FIRB consider proposals for foreign investment. The national interest test would filter nothing out at all.

My second definition veers too far in the other direction. We could define national interest as national *economic* sovereignty. By this definition, a foreign takeover would compromise Australia's national interest if it reduced power and dominion over Australian economic assets. But this definition is surely "too hot" – every proposal for foreign direct investment would be screened out, since control of Australian assets always passes into the hands of foreigners when they invest here directly.

So while national *legal* sovereignty would see everything given a tick, national *economic* sovereignty would approve nothing.

Let me say a word or two more about national economic sovereignty. By definition, foreign direct investment involves the passing of control from domestic owners to foreign owners, as I've already said. When that occurs, foreigners pay for the right to control local assets – they pay what is known as a "control premium".

Normally we allow the market to decide how large the control premium should be. The question that arises in respect of the national interest is whether we can rely on the market to determine a control premium that correctly reflects the full economic impact of the takeover on Australia. Are there costs imposed upon the rest of us that are not picked up when a foreign bidder and a domestic target freely negotiate the appropriate size of the control premium?

This leads me to my third definition of the national interest, a definition which I think is neither too cold nor too hot but is "just right". My preferred definition of the national interest is "national economic welfare" – not national economic *sovereignty* but national economic *welfare*. So for a takeover to be found contrary to the national interest, it must be true that it would, on balance, reduce Australia's national economic welfare.

Notwithstanding the fact that, in general, foreign direct investment raises national economic welfare, there could be aspects of a particular proposal which compromise that general result. In such a case, simply allowing the target and the bidder to negotiate with each other in the open market may not produce an outcome which fully

reflects Australia's national economic interest. In this case, it would follow naturally that the Treasurer would impose conditions or block the proposal outright.

I used my preferred definition of the national interest in my report for J P Morgan on behalf of Shell. I was asked to be the FIRB for a day and consider whether or not Shell's proposed takeover of Woodside was contrary to the national interest.

In my report I identify eight areas where a foreign takeover could, in principle, impose costs on the rest of us that would not be included in the control premium negotiated between foreign bidder and domestic target.

The first is tax. It may be the case that a foreign entity taking over a domestic firm could, by deliberately manipulating its transfer prices, erode the national tax base. Such erosion could be sufficiently severe that any benefit associated with the takeover was more than outweighed by the loss of economic welfare through erosion of our tax base. A second area is competition. A foreign takeover could so upset domestic competitive conditions that the foreign controlled entity is able to exercise monopoly or market power in Australia. Allowing the foreign takeover in such circumstances would sell us into a form of economic slavery.

A third area is the possible subjugation of our national economic development to a foreign agenda. In other words, the foreign-controlled firm would make decisions according to its own interests, which may not reflect the optimal priorities for Australia's economic development. This is the main issue on which the debate over Shell/Woodside has focussed.

A fourth possibility is that there could be a loss of high paying jobs, in particular jobs associated with the movement of corporate headquarters out of Australia. Corporate headquarters tend to attract high-paying and high-value-added jobs, both within the headquarters themselves and in ancillary service industries, e.g., legal, accounting and consulting. The loss of good jobs could be sufficiently large as to outweigh the benefits associated with a foreign takeover, particularly in combination with other effects.

Fifthly, there could be a substantial replacement of local content by imported content. I'm not saying that imports are bad – I'm simply making the point that, if a foreign-controlled company were suddenly to replace a lot of local content with imported content, there would be an impact on the exchange rate. The exchange rate would be weaker, other things equal, resulting in a wealth loss for Australians generally.

A sixth point is that we could lose research and development activity to foreign countries, as well as the associated potential for patents to be developed here in Australia. A seventh point is that the foreign-controlled entity may have lower environmental standards or may chose to flout local environmental laws when it takes over a local

company. We might find ourselves with an environmental monster on our hands.

Eighth, and finally, national security could be compromised. By allowing assets, especially strategic assets, to fall under foreign control, we may find ourselves compromised in the event of national emergency. Foreigners may not be as loyal to the national cause as Australian citizens or, worse, could co-operate with an enemy.

In any one or more of these eight areas, it is certainly possible that a foreign takeover could impose costs on the wider Australian community. These costs may be sufficient to outweigh the economic benefits of the foreign takeover, leading to a net reduction in national economic welfare. In such a case, the Treasurer would be justified, indeed obliged, to intervene to protect the national interest.

I emphasise that, even if there are problems in one or more of the eight areas, it is incumbent on the Foreign Investment Review Board and the Treasurer to weigh such costs against the benefits which are otherwise presumed to attach to foreign direct investment in order to reach a balanced judgement.

My involvement tonight is a result of the fact that I was asked by J P Morgan to apply these tests to the Shell/Woodside proposal. In my report, I find on all eight grounds that Shell's proposed merger with Woodside is neutral for the national interest. That is to say, I do not find any area in which the proposal would reduce national economic welfare and hence, by my definition, run contrary to the national interest.

I happen to be neither a member of the FIRB nor the Commonwealth Treasurer. If I were in either of these positions, however, I would recommend that the proposal be allowed to proceed. Certainly, I find it hard to understand the delay, since I find no grounds on which the proposal can be held to be contrary to Australia's national interest.

FOREIGN

INVESTMENT AND THE BRANCH-OFFICE ECONOMY

John Quiggin

Australia has been a net international borrower for most of the period since British settlement. Foreign borrowings and direct foreign investment have allowed a large number of investment projects to proceed which otherwise would either not have taken place or would have required considerably lower levels of expenditure, and therefore lower living standards, for Australian households.

The benefits of international borrowing are obvious. At regular intervals, however, costs of reliance on foreign capital have become apparent. Real and perceived problems associated with foreign debt exacerbated the difficulties generated by the depressions of the 1890s and 1930s and the "recession we had to have" from 1989 to the early 1990s.

At other times, notably in the 1970s, the main focus of concern has been foreign equity investment which has resulted in foreign ownership or control of many important Australian businesses and, in some cases, entire industries. This concern has re-emerged in recent years, with a particular focus on the notion of a "branch-office" economy. The central claim is that foreign ownership will result in the replacement of companies headquartered in Australia by branches of transnational enterprises based in the United States, Japan and Europe.

Along with this concern has been a strongly argued view that, provided Australia's financial and macroeconomic policies are sound, there is no reason to be concerned either about foreign debt or about foreign equity investment. At the core of this view is the argument that net foreign borrowings are simply the aggregate outcome of investment and borrowing decisions made by individual households and businesses, who should be assumed to be acting in their own best interest. If particular transactions are based on mistaken beliefs about the profitability of investments or the credit-worthiness of borrowers, that is a problem for the parties concerned, but should not lead governments to intervene.

The object of this paper is to reconsider arguments about foreign investment in the light of the "branch-office economy" debate. It will be argued that concerns about a branch office economy are valid. However, the determination of appropriate responses is a complex task. Consideration is given to a number of policies including more critical scrutiny of particular foreign investment proposals, policies designed to increase Australian national saving, policies designed to increase the proportion of Australian portfolios allocated to domestic assets and finally, policies relating to privatisation and public ownership.

The long boom and the debate over international capital flows

The current debate over foreign investment must be understood in the light of institutions and attitudes developed during the "long boom" from 1945 to the early 1970s. For nearly 30 years after World War II, international flows of capital were tightly constrained. Unregulated capital markets were widely seen as inherently unstable and as a major contributor to the Depression of the 1930s. Hence, the financial structure established at the Bretton Woods conference in 1944 allowed for tight controls on international movements of capital, along with fixed exchange rates and a presumption that individual countries would determine their own macroeconomic policy.

During the long boom, international flows of capital were small in relation to aggregate world output. Short-term flows were tightly restricted, so that gross flows (the total volume of international financial transactions) were roughly equal to net flows (the amount of capital actually transferred between countries over a given period).

In this context, arguments about foreign investment mainly focused on proposals for direct foreign investment in new projects. Advocates of foreign investment pointed to the potential transfer of technology and skills associated with the establishment of Australian subsidiaries by firms such as General Motors and IBM. In the strongest version of the "technology transfer" argument, it was suggested that the skills learned from branches of foreign firms could be used by Australian companies to compete initially for the domestic market and ultimately in international markets.

Opponents pointed to concerns about the loss of national sovereignty and vulnerability to changes in investor sentiment. Moreover, they argued that the interests of stakeholders in the local subsidiaries established through foreign direct investment would be subordinated to the interests of the parent. In place of the commonly-used term "multinational" which implied an enterprise with more-or-less comparable operations in different countries, these critics preferred terms like "transnational" and an analysis which assumed that decision-making power was effectively exercised in US and European

headquarters. This was, in some respects, an anticipation of the "branch office economy" debate that has arisen recently.

The political compromise reached in Australia in the 1960s was a system of case-by-case evaluation of foreign investment proposals. The general assumption underlying the regulation of foreign investment was that, other things being equal, Australian ownership was preferable, but that the benefits associated with foreign investment would often outweigh the cost.

The debate over foreign investment was changed radically by the breakdown of the Bretton Woods system in the early 1970s and the abandonment of controls on international capital flows which took place during the 1970s and early 1980s. For Australia, the most notable step in this process was the floating of the dollar in 1983, which was followed by fairly comprehensive financial deregulaton. The presumption that Australian ownership should be preferred to foreign ownership, particularly in the case of foreign takeovers, was replaced both in form and in substance by a general presumption in favour of non-intervention.

The current account deficit

A striking feature of the period since financial deregulation has been the growth in net international borrowings by the English-speaking countries. The counterpart to these borrowings is growth in the current account deficit, and the cumulative outcome of persistent deficits is growth in net overseas obligations. Australia and New Zealand had always been net borrowers, but their current account deficits rose sharply after deregulation from around two per cent of GDP to around five per cent. The United States, which had been a net lender since 1914 ran its first current account deficits for nearly a century in the mid-1980s. In the recent boom, the US current account deficit has approached five per cent of GDP. Even the United Kingdom, a net lender for the past two centuries except in wartime, now fluctuates between surplus and deficit on the current account. A crucial issue in the debate over foreign investment is whether this shift towards borrowing represents a reallocation of capital to economies with promising investment opportunities or a short-term consumption binge which will end badly.

The rapid growth in Australia's net international borrowings which followed deregulation came as a surprise and was a cause of considerable concern in the 1980s. This concern was accentuated by evidence that much of the borrowing was financing an unsound speculative boom in which business was increasingly dominated by "entrepreneurs" such as Bond, Elliott, Holmes a Court and Skase.

When interest rates were increased sharply in the late 1980s, a vigorous debate emerged concerning the appropriateness of

contractionary policies designed to reduce the current account deficit. The most prominent critic of such policies was John Pitchford of the Australian National University, who presented the argument that the current account deficit was simply the aggregate outcome of borrowing and lending transactions arising from the investment and consumption decisions of individual households and businesses in Australia and overseas. In the absence of market failures, the parties to these transactions should be assumed to be acting in their own best interest. If market failures are present, they should be addressed directly, through changes in the regulation of financial markets, rather than through contractionary macroeconomic policies.

In retrospect, most observers have conceded the validity of Pitchford's arguments against the use of contractionary monetary policy to control the current account deficit. Attention has shifted to the question of whether there are, in fact, important market failures associated with financial deregulation, and whether the appropriate response is the reimposition of some form of regulation or a more comprehensive policy of deregulation. Discussion of this question has been largely subsumed by the more general debate over the impacts of international capital markets on macroeconomic policy and macroeconomic outcomes.

Capital markets: sources of discipline or sources of random shocks

The growth in the volume of financial flows was accompanied by growth of the esteem in which financial markets were held. It was argued that the deregulation of international financial flows forced governments to submit to the discipline, sometimes painful but ultimately beneficial, imposed by international financial markets. Claims about market discipline supplemented more general arguments that government intervention restricting the investment decisions of firms and households were inherently undesirable.

Belief in the beneficial effects of financial market discipline was boosted by the inflationary experience of the 1970s and 1980s. With the failure of governments to control inflation, financial markets stood out as the only institutions resisting a continued inflationary spiral. Indeed, financial markets are naturally focused on inflation. In the absence of default by governments, the value of financial instruments such as bonds and currency futures are determined, in the long run, almost exclusively by rates of inflation. It does not matter whether a country has high or low unemployment, weak or strong growth. If price levels are stable, the exchange rate must also remain stable in the long run, and investors in bonds will receive the returns they expected when they made their investment decisions. Thus, in an inflationary period,

the idea of financial markets as guardians of economic rectitude has some substance.

Subsequent developments, particularly since the middle of the 1990s, have led to qualifications of claims about the power of financial markets and the extent to which financial markets are accurate and impartial judges of the merits of economic policy. With inflation rates at low levels in most developed countries, the role of financial markets as a source of monetary discipline has become less important. Moreover, as the example of New Zealand has shown, excessively zealous pursuit of low inflation and the approval of financial markets can produce economic stagnation.

The most important factor in the development of a more balanced view of financial markets has been the series of international financial crises, of which the Asian crisis beginning in 1997 was the most important. The Asian crisis undermined the "market discipline" view since the countries that were hit hardest were precisely those that had previously been regarded most favorably by financial markets. If the demands of financial markets are unpredictable, the idea that governments can prosper by complying with those demands is logically incoherent. The boom and bust in the NASDAQ index (which doubled in value between March 1999 and March 2000, then lost all its gains in the following year) has generated further scepticism about the rationality of financial markets.

The imposition of exchange controls by the Malaysian government in 1998 was a pivotal event. The "market discipline" theory held that any such policy was grossly mistaken and that, in any case, the financial markets would not allow such a policy to be implemented. In the event, the policy was successful in achieving at least some of its short term goals and Malaysia was able to re-enter global financial markets without any apparent retribution.

Portfolio reallocation, mergers and the branch-office economy

During the long boom, the debate over foreign investment was seen primarily in terms of costs and benefits to national economies. With the widespread dissemination of the view that national boundaries are irrelevant, advocates of unrestricted foreign investment have increasingly focused on the benefits to individual investors and corporations of an internationally diversified portfolio of assets.

In a fully globalised world, individuals' choices of portfolios would be determined by their own financial needs and attitudes to risk and would not be determined, to any significant extent by the fact that they happened to live in a particular country such as Australia. If Australia produced two per cent of world output, then the average

investor, whether in Australia or overseas, would allocate two per cent of their investment portfolio to Australian assets.

It might be hoped that if two per cent of world output were generated in Australia, two per cent of all firms would also be based in Australia. Assuming Australia could supply managerial skills proportionate to its size, this would be the outcome in a simple competitive model of the world, in which a large number of firms competed in every industry.

Just such a model was put forward by advocates of globalisation in the early 1990s, who argued that the day of the big corporation was over and that concepts such as natural monopoly were obsolete. In practice, however, the era of globalisation has been one of unprecedented global mergers, which seem likely to produce a situation (familiar to Australian consumers) in which many global industries are dominated by a handful of firms.

The headquarters of these global enterprises are increasingly concentrated in a few "global cities" – New York, London, Frankfurt and so on. Peripheral countries like Australia seem likely to be reduced to the role of "branch-office economies" with no significant share in the market for corporate headquarters and no share in the associated high-paying jobs and high-employment supporting service industries.

The same trend to centralisation is evident within Australia, where Sydney has become increasingly dominant, as mergers have eliminated many firms based in smaller cities, and Melbourne, its one-time rival, has fallen steadily further behind. Similarly, having grown at the expense of smaller centres in New Zealand, Auckland is now losing business to Sydney.

These developments are surprising in view of the dramatic reductions in communications costs, associated with the Internet and advances in fibre-optics and other telecommunications technologies. Far from enabling management functions to be geographically dispersed, these advances appear to have promoted more centralised management structures with local branches being run from head office on a "fly-in, fly-out" basis.

There are at least two possible explanations for this paradoxical outcome. The first is that, despite improved communications, the need for face-to-face contact has not been displaced, at least for those in senior management who can afford to demand it. The second is that business headquarters gain benefits from being located together such as the friendly political environment that arises when the economy is dominated by financial capital.

The tendency towards global mergers also creates dilemmas for competition policy. Proposals for mergers between Australian firms are increasingly being supported by the argument that such mergers are necessary to meet competition from larger foreign enterprises. If

accepted, such an argument naturally gives rise to a policy approach based on the creation of "national champions" and the subordination of concerns about the effects on consumers of reduced competition.

Possible responses

If we conclude, on balance, that the costs of further increases in foreign ownership of Australian businesses outweigh the benefits, what policy responses are available? The imposition of tighter *ad hoc* restrictions on particular takeovers is unlikely to be effective in isolation, given the structural requirement for capital inflows to match continuing current account deficits.

An appropriate response must consist of two main elements. First, Australia must seek to reduce its dependence on net inflows of foreign capital by increasing private and public savings. Second, the global financial "architecture" must be reformed in a way that reduces gross international flows of capital. A "Tobin tax" on international flows of capital could help to reduce short-term capital movements.

It is also necessary to re-examine the debate over public ownership and privatisation. Many recent privatisations have been accompanied by restrictions designed to ensure continued Australian ownership of the privatised firms. It is becoming increasingly evident that such restrictions are untenable in the long term. Hence, if an enterprise is too important to be allowed into foreign ownership, it is probably too important to be privatised in the first place.

Photo – David Karonidis

Alice Spigelman

From Vienna to the years of Anschluss, to Sydney, architect Harry Seidler has lived an eventful life. Interned in Canada, enrolled at Harvard and began a forty year love-hate relationship with his critics. After writing Harry Seidler's biography, *Almost Full Circle – The life of Harry Seidler* (Brandl Schlesinger), it took months of consultation before author Alice Spigelman and her subject could agree on the final outcome. On Tuesday 10 April, Alice Spigelman addressed The Sydney Institute and canvassed some of the more intriguing anecdotes she found in her research on the life of Harry Seidler.

HARRY SEIDLER

– *A LIFE*

Alice Spigelman

My strongest memory of the day of my graduation is my father's demeanour; solemn, almost sad. I did not know at the time, though I assumed I did, about the kinds of ghosts that haunted him. How much it must have hurt him that, having lost everything during the political upheavals in Hungary, it was too late for him to reach the same level of success in Australia that he had back in Europe. My graduation ceremony must have been a painful reminder of his own unfulfilled ambitions. It was simply too late.

Propel yourself back then, almost 30 years, to 1946 to Harry Seidler's graduation from the Graduate School of Design at Harvard, where he saw his parents for the first time in six years. Political events and the war had separated the family. Harry Seidler's youthful years spent, not in carefree anticipation and wondering, but in worry, fear and a dogged pursuit of a secure life that at the time seemed elusive. His experiences then forged a determination of steel in him. As children of immigrants do, and he was that three times over, he was determined to realise his parents' lost ambitions. Harry's father's business was confiscated by the Nazis and his spirit broken by the time he arrived in Australia. It was up to the Seidler's youngest son to fulfil the family's aspirations.

Children of immigrants, especially ones who migrate in their teenage years, tend to experience a peculiar form of dislocation. Not all the roots that bind them to their homeland are left behind. They put down new roots, but the old ones never quite wither. So they tend to live their lives in a bit of a limbo, not feeling complete attachment to either place. The only advantage of this is that it's a good position to be in if you are an artist. As an outsider, you get a bird's eye view of life, forced to communicate through your art-form, not the way most others do. Harry Seidler has remained outside the local architectural fraternity because his reference point to architecture is not through his relationship with Australia, or even Vienna. He is outside both places

because his allegiance is to the cause of modern architecture. He only feels at home when he is given freedom to practise it.

Harry Seidler has, by anyone's account, succeeded. He has built up an international reputation as a respected architect, his buildings have made a considerable impact on Australian cities, and are generally well regarded by his colleagues. But he still has his critics, and one question that crops up is – are his buildings Australian?

I can't think of another nation that asks; Is this building French? or English, or American? It sounds ludicrous when we hear it applied to other nations, yet we continue to be absorbed by these ponderings. The French happily allowed a Chinese-American to build a modern glass Pyramid in front of their icon, the Louvre, and no one asked; yes, but is it French? We do it because we are not yet sure who we are. We want our painters, musicians, architects and other artists to tell us, and reward those who incorporate identifiable, Australian symbols into their work. Arthur Streeton's recognition of the characteristic Australian colours and light of the landscape, Grace Cossington-Smith's unique eye focusing on everyday life, Margaret Preston's Australian flora given definitive shape, Fred Williams redefining the landscape, Garry Shead's capturing the imagination with his D.H.Lawrence paintings that celebrate our Australian symbols. And not least Glen Murcutt's houses.

I am not commenting on artistic excellence, but the fact that it is the Australian symbols offered here that have made these artists' works prominent. We are currently celebrating the design art of the Frenchman Lucien Henry, who lived here at the beginning of the century, and enthusiastically celebrated and explored our flora and fauna in elaborate design form. The show at the Powerhouse Museum has obviously caught the public's imagination. On the other hand, an outstanding artist like Kevin Connor is not instantly recognised by many because the content of his paintings springs from a deeper inner source.

Harry Seidler's buildings also have their foundations in a definite philosophy. They address a set of problems arising from the given site, the climate, the people for whom he is building. That, to me, means that if he is building in Australia, the structure has to be Australian. Not in an obvious way with the deliberate use of Australian symbols, but arising from a deeper set of references, based on the practicalities of building. Such as using a sandstone base for a house because it can be found around the site. Or devising a specific kind of sunshade system to cope with the strength of the Australian sun. Although not unique to Australia, these features are devised in answer to a set of Australian conditions, though not primarily for decorative purposes.

Recognisable symbols, after a time, become passing fads and disappear, emerging as historical references. You would not use them today, but we still contemplate them nostalgically to gain a better

understanding of who we are, where we come from as a culture. People would generally be horrified today if anyone seriously proposed decorating one of Centennial Park's gates with huge garlands of bright red waratahs, as Lucien Henry did early last century. We are beginning to be more comfortable with contemporary design. Look at most interiors of new apartments, with hardly a nostalgic reference to the past. Post-modern architecture, so popular in the last decade has passed from favour. What happened to all that lattice stuck on building facades? Suddenly they seem embarrassingly kitsch and outmoded. It is the antithesis of modern architecture and Seidler has fought against it passionately, to the extent of mounting a campaign to stop such a post-modern extension to the Whitney Museum in New York. His group won, and his teacher and mentor Marcel Breuer can rest in his grave.

Interestingly enough, although we protest when visible older structures are threatened with demolition, we mutely accept the fact that only their facade is retained. The history may be ripped out of them, but we don't see it. The renovations of the old GPO building are celebrated, even though inside it there is hardly a reminder of its past, and if there is, it sits uneasily among the new interior design. We plan to destroy an historical site like the Manly Quarantine Station by allowing developers to rip out the inside of the cottages to "modernise" them into hotel suites, not realising that as exact replicas of ships' cabins on which immigrants arrived on our shores they are part of the history of this city.

Glen Murcutt has said that we are a visually illiterate country. We do not grow up surrounded by centuries of accumulated architecture, we are still in the process of defining our cities. We are somewhat lost in the process, because modern highrise hit our shores suddenly, before we had time to consolidate what had been built earlier. Seidler was the most prolific and passionate proponent of modern architecture in the 1950s and 1960s, when this happened. There was never a well-conceived strategy that anticipated how to build modern architecture alongside the old. The Europeans do it effortlessly, of course, mainly because it's not an issue whether something is heritage or not, even if it's been there for a few hundred years. Also, entrenched rules make rampant development impossible. We have never got right the overall planning of the city. We were flooded with problems by the 1950s and tried to cope with them as we went along. Which is by and large what we do now.

The Museum of Contemporary Art is a good example is this ad hoc decision making process. The State Government has passed it on to the City Council, who would like to erect an icon building in keeping with the Opera House. Razing the present structure built in the 1950s and replacing it with a commercially viable building,

incorporating a cinema complex, means that the modern city along George Street would seemingly be creeping into the Rocks.

We don't have any guidelines in place that might tell us how the Rocks fits into the rest of the city, how it relates to it. We don't have any guidelines as to how any tall tower in Sydney impacts on the city as a whole. We simply do not treat the metropolitan area as an entity. Its divided sections make their own planning decisions, and as a result we suffer the lack of an integrated transport system. There is certainly a need for a powerful central planning system for the metropolitan area, but to achieve that is not easy. Who would be part of that body? How to structure it to ensure an honest and expert decision making process?

The question of heritage is just as difficult. How do we know what to demolish and what to save? For all its faults, Sydney is a thriving city, partly because it is continually being reinvented. But preserving older buildings is also important, as we refer to our history to forge an identity. The conservation movement is stronger today, though it won't be effective until government supports it financially.

You can't expect a person owning a heritage house to sacrifice his or her life's savings by refusing the enticements of a developer. Which is the drama being played out, ironically enough, around one of Harry Seidler's earlier houses, the "igloo house" in Mosman, built around the same time he was constructing Rose Seidler House in 1950-52. Its owner was about to sell it, but the buyer only wanted it for the site, intending to demolish it. Harry Seidler was very upset, when a journalist happened to see the relevance of these events to the conundrum of modern architecture as heritage. The story received considerable attention and as a result the house has received a year's reprieve while its fate is determined. It is ironical, of course, because Seidler does not believe that many of our older buildings are worth saving, apart from Greenway's. And now his buildings are in the same garden as those "older houses". He finds it difficult to accept his own buildings as heritage, and I suspect that he does not. He would think they should be preserved because they are good buildings, not because they have been there for a long time. Nevertheless, it shows up the inefficiency and ad hoc approach to heritage issues. There is no holistic appraisal of it, no strategy, no guidelines in place. Unless government and heritage bodies work together closely, it will not improve.

Seidler is a passionate person and will go to great lengths to build in the way he believes. He makes enemies if they stand in his way. When he was building a house in Castlecrag he found that his design was not approved because it used materials not in the covenant of the area, left by Walter Burley Griffin and Marion Mahoney. Seidler found her still living in Chicago and pleaded with her to allow him to build as he wanted, but he met his match. Marion Mahoney refused.

Modern architecture that emanated from the Bauhaus is often referred to as the international style, and not regarded as Australian. It is seen as foreign because it originated in Europe. Building according to the tenets of the Bauhaus means using the latest materials and techniques available, because they will give you the greatest creative freedom. It means not referring to the past, sticking bits on a building as a reminder from another era, or using fake columns and other decorations because they have no true function. And that is precisely why we can't perceive modern architecture as our own. By its nature it can't have recognisable elements from the past, to tell us that it is Australian. And we are not confident enough in our identity to accept them as our own without these symbols.

Harry Seidler personifies the immigrant who has settled here but whose ways continue to be regarded as foreign. If only he would use a bit of corrugated iron he would be thought of with less suspicion! But he refuses to do so, because he fervently believes in contemporary architecture. It is like religion to him, a way of life. So much so, that he broke a 30 year relationship with Lend Lease because he felt he could not put his name to the interior refurbishments of the Darling Park tower. He had designed the building but Lend Lease had brought in another architect to fit out the lobby. The interior space was not in keeping with the total design principle envisaged by Seidler. And I ask you to walk into that lobby, full of stuffed armchairs and coffee-machines, to invite busy executives to linger there. It should be welcoming, but it is a depressing space, verging on kitsch. It was designed to please the public, a seemingly admirable step, with historical frescoes painted on its ceiling in a 1940s style. Not in a contemporary manner in keeping with the building. You would not find a contemporary Italian building with frescoes on its walls painted in the style of Giotto. Inventive design can't be imitative at the same time.

Harry Seidler has always had strong ties with Vienna, where he was born, even though as a teenager he was forced to flee from the Nazis. He is drawn back partly by the respect he has for the way they build there. He tells you he does not like to shake hands with older Austrians, wondering what they were doing during the war, but he is comfortable working with the new generation. The Viennese Government invited him back deliberately to honour him as one of its former citizens, to make up for the past. Although the Viennese Government has strict building regulations, and an exhaustive bureaucratic and political system in which an outsider can get totally lost, once an architect is engaged his or her decisions are accepted without qualification.

Seidler is just finishing an extensive housing development, the Neue Donau, an interesting mix of public and private housing there.

Built in three stages, the first being a seven-storey development of 250 apartments, the government rents a certain percentage at very reasonable rates, which is inherited by the tenants' children. This mix of private and public housing, often found in European cities, reduces the likelihood of pockets of disadvantage developing in geographical areas. The socialist government of Vienna owns large numbers of such public housing, which appeals to Seidler's belief in superior public housing. Although he has built one block of apartments for the Housing Commission in Rosebery, it is in no way close to the standards set by the Viennese Government and he is still extremely disappointed that he has not been able to build something similar here.

As prolific as he has been in this country, Harry Seidler does not sit back with satisfaction to survey his accomplishments. On the contrary, he is driven to achieve. He is not interested in the past, even his own. He was surprised to learn, during the writing of this biography, about the origin of his ancestors. And this partly from the provincial Austrian settlers' wish at the turn of the last century to become more Viennese than the Viennese, as his parents did, and partly from an intense interest in the present, he was not interested in finding out more about his ancestors. The political events of his childhood made him focus on survival, as he did on arriving in Australia. By then, as a 24 year old, he was intensely devoted to modern architecture and became not only its devout practitioner but its avid promoter.

Seidler never missed a chance to convert people to it. I don't think that his fairly forceful manner in doing so made this too successful among the relaxed and culturally conservative Australians of the 1950s. As well, although people were interested in anything modern, modernism as a movement never put down strong roots here because it arrived too early in our cultural history. It came before we had consolidated our history, architectural as well as otherwise. Seidler tells the story of arranging an exhibition of the Bauhaus artist Josef Albers' paintings, which were a form of experimentation with colour. It went down like a ton of bricks, he recalls, people puzzled by squares within squares of different hues. And Walter Gropius' visit hardly made the news.

It was extraordinary to discover Harry Seidler's insecurity, that he feels that he has never arrived. It is not surprising when you realize that that was how he felt from the age of 15 on arriving in England as a refugee, until he got to Harvard as a 22 year old. Herded on a ship bound for Canada, as an enemy alien, its sister ship the Dunera destined for Australia.

On his way to Canada, Seidler found himself aboard ship, and among the many Jews were Nazis still in uniform. Then 18 months of imprisonment in camp. Later, at Harvard, what allayed his anxieties most

of all were Gropius' teachings. The assurance of his words in the shifting certainties of a post-war world. The socialist ideas inherent in Groupius' teaching became the cornerstone of Harry Seidler's belief system: that in building a certain way you could make a difference to people's lives. They provided certainty at a time of Seidler's life when he still didn't know where he would end up, where he would try to put down roots again. Of course, he never has. Architecture has become his home, his entire existence. If you criticise his architecture, you are attacking him personally. And after all the medals and accolades he still persists in trying to prove that only good contemporary architecture will give us the lifestyle we deserve.

Of course, the problem has been compounded by the fact that the majority of modern buildings in Sydney, at least, are inferior. Some are built of glass when, in this climate, that's a poor choice of material, or they make living or working in them difficult or unpleasant, providing less than adequate living and working conditions. We have had few debates about what is good and what is poor modern architecture, or how it needs to relate to planning.

Harry Seidler was ahead of his time and I think that he has always been that. His story runs parallel with the story of modernism in this country, his clashes personifying the difficulty of a Victorian city coming face to face with contemporary architecture. Picture a Bauhaus-trained architect with a bow-tie turning up at the local council in 1949, to explain why he didn't have a window in the bathroom. When Seidler pointed out that it was in the ceiling, they dismissed it and his fight with councils began. More than 50 years later it is still going on, the last one in the Southern Highlands recently over plans to build a family house overlooking the Belanglo Valley. Plans were rejected on the grounds that the house didn't fit in, regardless of the fact that there were no other houses to be seen anywhere. Built partly of local sandstone, partly of glass, it is one of his best houses, the bush seemingly becoming part of the house.

So what hasn't changed? I think our sensibilities have and we are more confident in exploring current ideas than adapting old ones. What hasn't changed is the infrastructure in place to administer to us. That's still Georgian, when we are building contemporary architecture.

Seidler's story is one architect's tale that made a considerable impact on Sydney and our other cities. It's a good opportunity to look at his life and work to see what it has brought to our way of life. Could Sydney have remained largely a Victorian city? Unlikely, as highrise was too attractive to the large firms making their mark in the 1960s. Tall towers were only a matter of time and it was the developer Gerardus Dussledorp who happened to start the trend. We blame him for razing Rowe Street and the Australia Hotel, but think what could be in place of the MLC Centre. He found in Seidler someone like him, keen to

push the boundaries of innovation. Certainly he was motivated by financial gain, but also by achieving a high building standard. Look at Australia Square, a timeless structure. Many mistakes were made then; no one realised the implications of building tall towers. Blues Point Tower should never have been built where it was. But it was the decision of local Council that made it possible. An architect in the building process is just one person. What Harry Seidler's life can show us is how we have failed to deliver the best infrastructure for the planning of this city. And what a story his has been, and it's still going full steam.

1. Bob Breen, Margaret Paczkowski
2. Senator John Tierney, Gerard Henderson, Steve Toneguzzo
3. Sunita Devi
4. Gerard Cudmore
5. Amy Denmeade
6. Vera Ranki
7. Ian Kortlang, Bill Bowtell
8. Geoff Baker, Sue Howard

Photographer: David Karonidis

John Tierney

Steve Toneguzzo

New South Wales Senator John Tierney believes Australia has been a nation of gamblers for a long time. But now we have a gambling technology that invades the home and workplace like no other – online gambling. And to him, the social consequences are a national crisis. "What it could do," says Senator Tierney, "is turn every home with a television into a casino." Steve Toneguzzo is Managing Director of the Toneguzzo group, comprising GGS and e-Synergies. GGS is the world leader in the evaluation and auditing of internet gambling systems. To debate the pros and cons of online gambling, Senator John Tierney and Steve Toneguzzo addressed The Sydney Institute on Wednesday 18 April 2001.

ONLINE GAMBLING

John Tierney

Australia has always been a nation of gamblers. If two flies were crawling up a wall, Australians would bet on which fly would get to the top first. Traditions like two-up and the Melbourne Cup have enshrined gambling as part of our culture and for many people buying a lotto ticket every week isn't going to break the bank.

To a large extent this sort of activity is enjoyable and fairly harmless. Indeed the average gambler in Australia loses about $600 a year and that is neither here nor there. But we do have a growing number of problem gamblers who on average, according to a Productivity Commission report in 1999, lose about $12,000 a year.

These are people who are often from poorer socio-economic groups and the effects are quite devastating.

Unfortunately the regulation of gambling throughout our history has failed to combat this growing tide of problem gamblers. Australia already has around 300,000 problem gamblers. That is equivalent to a city the size of Canberra. If you add to that the people who are directly affected in some negative way, particularly family members, work mates, bosses or victims of crime, the number of people affected goes from 300,000 to two million. We're now talking about a population equivalent to Adelaide plus Perth. So that is the scale of the problem that we are facing.

With a new form of gambling set to completely overtake the current favourite of poker machines, Australia should be the last place to lead the world charge into online gambling.

Online gambling should be banned. One only needs to look back at the history of the accessibility and the regulation of various forms of gambling, which provide enough evidence to warrant such a move. No matter how carefully new forms of gambling have been regulated upon their introduction, the history of poker machines, the TAB and casinos shows that over time gambling regulations always get watered down because governments and business are always looking for ways to increase their revenues.

So you start with a high level of regulation and, over about 20 years, history shows all of those tight regulations are freed up. It has happened before and it will happen again, even if we allow highly regulated online gambling in Australia to begin.

History has a lot to teach us about the unravelling of gambling regulation over time. Poker machines were introduced and legalised in the 1950s, after they were found in police raids on private clubs. Slot machines, as they were called at the time, were illegal so state governments reversed this to stop the problem of underground gambling. Over the years, state governments have gradually liberalised the regulation. Now, 50 years down the track, Australia has one-fifth of the world's total number of poker machines. New South Wales, in fact, has one-tenth of the world's pokies and only one-one thousandth of the world's population. We are punching 100 times above our weight.

In the early 1960s there was already a real concern about the social effects poker machines were having. The solution was to limit the amount people could actually put into a machine. Twenty cent pokies were abolished. This regulation didn't last long and today there are many poker machines that accept $100 notes.

In 1995 the NSW Government approved the spread of poker machines from clubs into pubs. The effect this has had is enormous. According to the Productivity Commission, from 1995, national gambling expenditure rose from $7.6 billion to $11 billion in a four year period. Since 1995 the incidence of female problem gamblers has risen dramatically. Figures from the Department of Gaming and Racing show that residents in NSW lost $3.2 billion on poker machines in the 12 months ending June 1999.

In fact poker machines are a sorry example of the exponential rise that increased accessibility and decreased regulation of gambling services has on community financial losses and State government revenue gains.

Another example of gambling's regulatory failure is the TAB. This was highlighted by Tim Costello and Royce Miller's book *Wanna Bet*. The authors maintain that when the TAB first started in the 1960s, regulations prohibited seating, promotions, drinks and aided broadcasts. It was intended to take illegal bookmaking off the streets and help reduce crime, as well as be an opportunity for State and Territory governments to get their hands on extra tax revenue.

When they first started, the TAB centres looked like post offices and certainly weren't near a pub or club. Costello likes to use the term "slippage". where once the TAB was legalised, there was a sanitising effect and arguments arose that it should be allowed to advertise. But no one questions this move. No one seemed to remember that the condition of making the TAB legal was that it couldn't be advertised.

Costello and Miller go on to say that there is a problem with the way that the legislation was introduced. In 1982 a bill passed through the Victorian government during a late night sitting, which no one debated. The MPs didn't even notice the change. The bill to move TABs into pubs wasn't even questioned. No one asked why the already strict rules on TABs were being removed.

Costello and Miller finish the argument by saying that it ended up being a case of unintended consequences that once the TAB was legalised, privatised and then expanded, the incidence of problem gambling also grew.

Welcome the world of marketing. When the Victorian Government decided to privatise TABs the result was felt across the country. Over the years, seating, broadcasts and promotions have all made their way into the familiar green TAB betting shops that can be found on most Australian towns and suburbs and more recently in pubs.

The current situation with TABs, in pubs in particular, is a far cry from the tight regulatory system established in the 1960's. State and territory governments have allowed this slippage because they have become addicted to gambling revenue and have allowed gambling facilities to become increasingly available over the last 50 years.

As a result of increased access we have a major challenge with problem gambling in this country. On the one side you have state and territory governments who want a revenue maker and gambling fits that role. On the other side you have big business who want profits for the industry. This is a perfect fit, a symbiotic relationship, as both groups have a vested financial interest in a booming gambling industry.

The situation today is that Australians have access to so many forms of gambling that a question needs to be raised as to whether we need yet another form of access. People can buy scratchies, lotto tickets, make a bet on the horses at the TAB or the racecourse, bet on one of the dogs over the phone, put some coins into the pokies or go to one of the casinos.

We are so saturated by gambling services that for the first time, the public is standing up and saying no more. A Productivity Commission survey found that 70 per cent of Australians believed that gambling did more harm than good and 92 per cent of people did not want to see the further expansion of gaming machines.

In the last few years the media have picked up on the ugly side of gambling with shocking photos and footage of how low this addiction can take people. The news that parents have actually locked their children in cars so they could go and feed their gambling addiction has rocked the notion of a harmless punt. Problem gambling is so serious that some estimate the cost of bankruptcies, counselling services, divorce costs and legal costs runs into the billions.

The Break-Even Western Problem Gambling Service estimates that a problem gambler affects between seven and 10 people. This includes, wives, husbands, children, employers, employees and creditors. The Productivity Commission estimates that the cost could be as high as $5 billion per year.

Despite this social cost and the growing public support for no more gambling services, a new form of gambling has arrived that could subsume all of those before it. Its name is online gambling.

The potential of online gambling is enormous and raises again the problem created by accessibility. It has the potential to turn every home in Australia into a virtual casino.

Forget having to go out of your house to play casino type games or poker machines. With online gambling you could have 24 hours access to betting in the comforts of your own home.

A recent report by the Office of Information Economy found that the growth of online gambling has the potential for negative social consequences due to its increased accessibility. What could be more accessible than a 24-hour casino in your living room?

I saw the potential of this scenario in the United Kingdom three years ago. What people may not understand is that you don't actually need a computer or digital TV.

All you need is a normal TV and a smart set top box on top of the television. People can set themselves up with this technology for less than $1,000. This enables you to have a split screen. On two-thirds of the screen you will see a normal television picture. On the other third, it looks very much like a computer screen where you have a number of options to choose from with the click of a button. Here's where you can place your bets.

The developers of gambling services are constantly dreaming up new ways of betting on the net. One quite destructive form is point betting.

Imagine it's the final of the Davis Cup and Lleyton Hewitt is serving at the start of match. As the match goes along viewers are inundated with statistics, such as the percentage of aces for each player. It's from here that a gambling bonanza could begin. Viewers might be able to bet on virtually any part of the match. Will he serve an ace? Will he fault? Will his opponent hit a forehand winner in return?

With online gambling, you could place a bet on the outcome of the game or point by point. You could lose your house in an afternoon doing that.

This sort of betting brings together Australia's three great loves – gambling, watching television and sport. Given Australia's adrenalin rush when it comes to their homegrown athletes competing on the world stage, thankfully this technology was not in place during the Sydney Olympic Games. You can imagine the computer overload when Cathy Freeman walked onto the track for the 400 metres final.

There are already about 800 to 1,000 online gambling sites on the internet that people have access to worldwide and the various predictions on how far reaching and how much this industry could be worth is astounding. Frank Feather, the author of *FutureConsumer.com* estimated at the Global Interactive Gaming Summit and Expo in Canada, that the online gambling industry could be worth $90 billion worldwide by the end of this decade.

It's no wonder big business is calling on the federal government to drop any plans to ban the new service. They want a slice of the pie. They want the profits. But what is not being considered are the social costs and the responsibility that the Australian government should have on this issue.

Figures are already starting to come in from the United States of the effects of online gambling; and it is something Australia must recognise. The American Psychiatric Association estimates that the number of Americans gambling on the net will rise from 4 million to 15 million in the next three years.

The Association has sent out a warning that young people will be the most susceptible to this form of gambling. This group uses the internet more than anyone else and they also have access to credit cards. The Association has found that many online video and board game sites that children play actually have links to gambling websites and advertise their services. They have found that 10 to 15 percent of young people surveyed have significant gambling problems and up to six per cent are pathological gamblers.

Although there are some sections in the community that are in denial about the extent to which problem gambling is in fact a problem, the Federal government is taking this issue seriously.

Legislation has been introduced that will effectively ban online gambling for Australians. It is a move that I have been calling for, for well over a year now.

With only a relatively small number of online gambling sites in existence banning online gambling by Australia is possible. The legislation will place the onus on gambling service providers to determine whether users are physically placed in Australia and if they are, to prevent them from accessing the gambling site. The process will not result in any reduction of internet performance.

What is important is that this regime will not place any obligation on internet service providers to filter or block prohibited interactive gambling sites.

This legislation will not apply to Australian online gambling service providers offering their services overseas. The government's view on this is that it is up to each country how they will approach online gambling. The aim of the legislation is to prevent online gambling from worsening the already problem gambling numbers we

have in this country. The government is not saying you can never have a bet. But we are saying that enough is enough.

Australians already have access to more gambling services than we can possibly dream of. A ban is needed for online gambling because just regulating online gambling will not curb a new breed of problem gambler who is young and mesmerized by the computer screen. Increasing the accessibility of gambling has always lead to an increase in the number of gamblers and problem gamblers.

Of course, there will be some people who find a way around this regime, particularly to the 900 offshore sites. If they choose to gamble with mafia.com or other dubious sites, people may well lose their money. It is hard enough to win on regulated sites. Waiting for your winnings cheque to arrive from the Caribbean could be a great dissuader.

The important point is that we won't give up. Governments have an obligation to try and eliminate or at the very least to push harmful pursuits to the fringes of our society.

Not to invite them into our living rooms to be part of mainstream activities. Online gambling is a very powerful and highly accessible technology. It has the potential to subsume all known forms of gambling and create many more mutations.

Given the inability of regulating systems to control the expansion of gambling in Australia over the last 50 years, a country with the world's worst problem gambling situation should be the last place to be rolling out the red carpet for online gambling.

TECHNOLOGIES
FOR THE REGULATION OF ONLINE GAMBLING

Steve Toneguzzo

Whilst there are those who would seek to kick down internet gambling, the Australian state and territory governments are seeking to build a well regulated internet gambling market to attract businesses serious about their credibility and consumer protection, and offer the global player a trusted alternative to non-Australian sites.

To attempt to prohibit a global product that defies regulatory borders in a world where there is little to suggest national, let alone global cooperation, can only result in an unordered, poorly regulated industry that might present a danger to the average consumer and be primarily used to facilitate the laundering of illicit funds. Transnational corporations no longer need to be located in a domestic market or have the approval of the domestic authorities to service that market. They can be represented by a computer application located anywhere on the planet, at any given time. They have the power to choose where to be regulated, if at all. Technology is driving policy and regulation. John Perry Barlow, of the Electronic Frontiers Foundation, warned in 1995 that we were in danger of getting "…Government by the clueless, over a place they've never been, using means they don't possess".

I suggest that the new world order that e-commerce presents, forces a change in the regulatory paradigm where regulation is no longer a sovereign right of governments, but rather a marketing option, based on a voluntary business decision that regulation as a facilitator of trust will create barriers to entry and facilitate increased market share. Australia must accept this reality and act on it or be left behind in the race to establish as a major player in the global e-conomy.

Context

If we break "internet gambling" down into its smallest elements, being "internet" and "gambling", there are no obstacles in regulating gambling, the activity. The obstacles are solely in regulating the internet, and I see the major impediments as defined below:

Definition – The internet has, so to speak, been built "by the people for the people". It is democratic, unstructured, and dynamic in nature.

Jurisdiction – A person anywhere in the world can transact with a site anywhere else in the world. The customer, the provider, the financier, and transactions may have instances in different jurisdictions. Is a company a resident where it (a) has its servers located, (b) where it is incorporated, or (c) where the management decisions are made? This question is further complicated insofar as identifying the location where a management decision is made given conference calls, e-mail and virtual meetings. So how does a regulator reasonably regulate (and enforce the regulation of) something outside of that regulator's jurisdiction? Perhaps only through international cooperation?

Government division and industry unification – Politicians, governments and law enforcement at state and federal levels experience difficulty cooperating amongst themselves on policy domestically let alone on an international basis. Apart from policy there is also the matter of priority. Meanwhile, the Electronic Frontiers Foundation presents a globally united front against what they consider are the "irrational and unnecessary laws" governing the internet. The Blue Ribbon Campaign is the international movement promoting free speech on the internet and it is perhaps only a matter of time before significant international "user" and provider associations begin to unify toward self-regulation.

Privacy – Given the use of encryption, anonomysers, and other readily available tools, if the regulator is oblivious to what data is being imported and exported, how do they know if the law is being broken?

Technology evolution – Industry is driving the technology and the technology is driving the government. Governments are bound to being reactive rather than proactive in defining controls, and may increasingly become the "slaves" to large corporations as trust (the essential e-commerce facilitator) is established through "brand names" and not regulation.

Gambling can be regulated and Australia has the best reputation in the world for well regulated gambling. But the medium on which the activity takes place, the internet, cannot be regulated with any semblance of efficacy. Accordingly, regulation of the activity becomes voluntary on a medium without borders.

Crossroads

It is a widely held view that e-commerce gambling is not viable without "trust". Trust facilitated through security, privacy, etc. We are at a crossroads – trust through regulation and brand names (sovereign government); trust through brand names and longer-term market

acceptance (industry self-government) alone; trust through the "perception" of regulation.

On the latter point, a company licensed by the Victorian Casino and Gaming Authority has had, and continues to have, substantial interest in the Caribbean. More recently, they developed a technical specification document for the government of Antigua. This document is not dissimilar from Australian requirements (however copyright is vested in the Victorian company and the document is not to be released without permission of the Government of Antigua). It would appear that there may be an emerging trend for "illegals" to attempt to legitimise by portraying compliance with "Australian" requirements and approvals by "Australian" companies, perhaps the "perception" of good regulation. This has a potential to impact on Australia. Nevertheless, such an approach may facilitate international recognition and cooperation between Australia and new entrants into the market, serious about good regulation, such as South Africa and the U.K.

We have large corporations who have established global brand names (both within and external to the gambling industry, often in the wider entertainment industry). There is an inherent global market acceptance and trust associated with those brand names. These corporations invariably have substantial investments in "terrestrial" (land-based) businesses and hold existing licences which they can ill-afford to expose. Accordingly, such corporations are currently not willing to expose their brands and businesses by establishing operations in jurisdictions of questionable credibility.

At this time there are few viable and credible markets within which to base the "big brand" internet gambling operations. Indeed, Australia effectively offers the *only* viable option at this time and with this offering is well positioned to establish trust through regulation as "brand-names" volunteer to submit to regulation. Such an alliance would establish an international benchmark by which the global internet gambling industry will be judged. Most likely through sheer market size, the current "illegals" would either need to raise their standards to include player protection, anti-money laundering and other provisions, go out of business, or continue in tax-havens as a front for the laundering of the proceeds of transnational crime.

The other path is that due to reasons of domestic politics or foreign trade pressures, Australia freezes progress or attempts to enforce a ban. This would merely expedite both the loss of a significant export market off-shore, and dilute the current appeal of "voluntary regulation" as trust through industry self-regulation and "brand-names" are established and governments loose control of any compliance agenda. Attempted prohibition does nothing to protect consumers. Furthermore, a moratorium of an extended period, say 12

months, would, in internet time, impose an effective prohibition and do nothing but establish monopolies for existing licencees.

Prohibition considerations

Content Filtering

In July 1999 the Australian government amended the Broadcasting Services Act to cover regulation of content that is delivered over the internet.

> Under the amended Broadcasting Services Act, from 1 January 2000 any person will be able to complain to the Australian Broadcasting Authority (ABA) about online content. If the ABA agrees that the material is potentially prohibited content, and the content is hosted in Australia, then the Internet content hosting (ICH) organisation is issued with a takedown notice. For overseas hosted content, which is expected to involve the majority of complaints, ISPs should put in place procedures to deal with the content.

In December 1999, the CSIRO prepared a paper for the National Office for the Information Economy titled: "Access Prevention Techniques for Internet Content Filtering". The report investigated inclusion and exclusion filtering, keyword filtering, packet filtering (look at IP address), URL filtering (address), profile filtering (characteristics of content), Image analysis filtering (e.g. detection of skin tones), filtering at the ISP and the client. The report concluded: "There is no single, 'good' technology that could be adopted by all ISPs to filter Internet content. The best choice for any particular ISP would depend on many factors… "

To implement effective content filtering will be at a significant cost in terms of ISP performance and stability. By impeding the ISPs, one impedes all users of that ISP, and hence the internet and e-commerce generally. Prohibition through filtering is simply not viable if Australia is to compete in e-commerce in the global economy.

Financial institutions

To gamble, one requires money. The more difficult it is to place a wager the less viable the activity becomes. Accordingly, it has been suggested that a way to suppress internet gambling would be to restrict the major form of payment at this time; credit card transactions. Essentially, it would be made illegal for a regulated financial institution to participate in an on-line gambling transaction. In my view, restriction of legitimate financial institutions would only serve to create new markets for private online banking and further diminish a government's fiscal control.

Already, there are several internet gambling suppliers who also operate digital banks in off-shore loosely regulated tax havens. These digital banks are reported to have millions of accounts active. It may

not be entirely clear if these banks were established purely to facilitate money laundering in conjunction with an internet casino operation or if they were established in the event a restriction was placed on traditional financial institutions.

Essentially, a player would instruct Visa, say, to transfer a sum from their credit account to the digital bank. The currency would be converted into "e-currency" and this might be used for many purposes; to purchase CDs, books, or virtual chips and casino tokens. Visa would not be privy to the subsequent transaction and in all probability the digital bank would be located in a jurisdiction over which the domestic regulator (eg Australia) had no authority. Accordingly, all Visa would be facilitating is an electronic transfer of funds to a private financial institution and thereby have nothing to report or to reasonably suspect in relation to, say, a requirement to report and/or block internet gambling transactions.

"Draconian" methods

Some other methods that could be considered, although quite extreme and with questionable efficacy, are:

1. The cable from a computer keyboard and monitor act as aerials radiating signals. Accordingly, law enforcement could patrol the streets in a suburb with "listening" equipment that would detect these signals (it is arguably of no use monitoring communications at a phone exchange given encryption), and automatically filter them to detect illicit commands or actions.
2. The setting up a sting operation with a "false" illegal site is another aspect; however there is the issue of entrapment.
3. To collect proof of the citizen's crime, law enforcement might rely on a family member or other "insider" reporting the activity and providing proof.
4. Prosecute a few "sacrificial lambs" to prove…"It can happen to you". Instill a fear into the general population that "Big Brother is Watching You", so don't try or you might get caught.

Policy

Broader gambling overview

Gambling in Australia is deemed socially acceptable so long as it does not result in criminal activity and social cost not outweigh the benefits derived from revenue. Government sets policy, which is translated into technical operational and security requirements for gambling equipment. Gambling equipment is then designed and built by suppliers and operators in accordance with the standards. The equipment is not permitted to be sold or operated in a jurisdiction unless the equipment has been tested and certified as complying with the published standards.

Once approved and operational, the gambling equipment must further be operated within an environment of government approved internal controls and operating procedures. Regular follow up audits are then required to ensure continued compliance.

This approach has been demonstrably successful in Australia.

"Voluntary" Internet regulations

In the case of internet gaming, it is the control of the medium that is of paramount concern. Gaming is local, the internet is global. Australian States and Territories are not trying to regulate the internet. They are offering a solution to regulation of the activity should an operator choose to establish in an Australian jurisdiction. Given the Internet is global, on-line gambling providers have a world of opportunity. To be regulated or not is at their discretion.

Essentially, the argument for Australian regulation goes something like this: I am a credible regulator with a proven track-record and reputation; I therefore can give your operation credibility; that credibility builds trust; in a global market, based on consumer choice, your business will survive based on the trust relationships you build; if you consider the credibility, what I, the regulator, can offer is worth it to your business; I invite you to submit to our regulatory proceedings; in return, you, the operator, pay me, the regulator, tax.

If Australia bans the activity or presents excessive barriers to entry, the operators will simply go or stay off-shore. If Australia is blinded by the alleged economic smoke screen being presented by the United States (in the form of the Kyl Bill) and follows the lead, then when the US does permit it, Australia's window of opportunity will be lost. Australian jurisdictions decided to be proactive and set about formulating a policy framework under which the positive international reputation Australia has as a "terrestrial" gambling regulator may be applied to cyberspace.

Draft regulatory model

In 1997, the Australia State and Territory Regulators prepared a draft model outlining a cooperative approach. The model was not prepared on the basis of research or theory, but by application of an understanding of gambling regulation by arguably the most effective gambling regulators in the world. Interestingly, no party was a signatory to the model. However, several jurisdictions set about defining legislation and regulations which complied with the principals laid down in the model. The major points of disparity have been those of tax rate and player identification. Observations of the key points of the model follow:

1. The approach seeks to minimise the impact of products provided from overseas or illegal sources by maintaining (and creating) obstacles to their advertising and marketing and by

providing alternative products where the entitlements of players are protected.

2. The legislation will provide for the free flow of information between regulatory bodies in each State and Territory and a licensing scheme will be based on a system of mutual recognition…admirable objectives, however to date the level of information exchange on matters of domestic gaming has been somewhat limited and licensing schemes remain independent between jurisdictions.
3. Operational controls over each product will be technology based using similar principles to those used to control and regulate existing gaming networks. Again an admirable objective, but currently all jurisdictions take a different approach. There is no standard, so by default applying similar principles will result in divergence.
4. Issues such as a demonstrable ability of the operator to pay prizes, approvals of gaming equipment, privacy, lodgment of complaints, provisions for problem gambling, provisions in the legislation and a general code of conduct are considered.
5. Prohibition of credit betting, provision for self-exclusion and problem gambling service contact is to be commended, as is the requirement for proof of identity. However these matters, as with all restrictions imposed by the model, can only apply to Internet gaming services offered from within Australia.
6. The model is contradictory in that on one hand alternate sites and interactive terminals in those sites are not envisaged, but on the other hand provision is made for a TAB or bookmaker to offer virtual lotteries, casino games and machine gaming. The model states that regulators will be subject to a Uniform Enforcement Code, but in numerous locations refers to individual jurisdictions setting requirements – how can one uniformly enforce different rules? The model does not propose a prescriptive technical national standard, but then requires independent testing…this begs the question, "Testing against what?"
7. Powers of inspectors are defined, but what jurisdiction will they have in sister states and overseas? Matters of extradition, and international cooperation are better dealt with at a federal level?
8. Taxation will be applied on the basis of location of residence of the player and will be set by the government of the jurisdiction of the player's residence. It is envisaged that taxation on overseas sourced bets would be lower than for local bets. The rate of local tax is to be no greater than for existing products. Furthermore, the fee structure and licence term will be set by each jurisdiction. Such a policy approach could tend to

promote the "prostitution" of the states and territories: trying to attract investment by undercutting their sister states. Perhaps the revenue sharing arrangement can work, but I only see it working where taxes, fees and charges are consistent and centrally controlled.

All service providers are required to test the validity of a player's jurisdiction of residence and may have an action taken against them where they do not. Internationally, this is a challenging task. Furthermore, by insisting that the service provider know the origin of its players, this implies that the Regulator may not allow a service provider to accept a bet from a player where gaming is illegal.

The model calls for no federal government involvement. Indeed, it concludes by stating that, "the effect of licence conditions imposed at the federal level would be somewhat cosmetic."

A successful world first

Lasseters Online has been operating since April 1999. It is the world's first regulated online casino, operating under legislation and regulations set by the Northern Territory government. In consideration of the "Draft Model", my company (GGS) was contracted by the Northern Territory government in early 1988 to assist in ensuring that "world's best practice" was applied to the Lasseters site, something difficult to do when you're faced with a world first. In any event we applied many existing regulatory technical, security and operational requirements that apply to land based (terrestrial) forms of gaming, games and gaming systems along with numerous department of defence requirements and international standards.

Many suggested that Lasseters Online would never be profitable because of the social measures employed at the site and the impediment this presented to instant gambling (as opposed to off-shore sites). In fact, it has been demonstrated through the Lasseters experience that the Australian regulatory model can indeed be successful. Lasseters prospectus states: "Monthly revenue has grown at a compound rate of 41 per cent since the commencement of operations in April 1999, and 32 per cent in the current financial year". Lasseters Online is considered to be a "role model" in terms of the extent, nature and application of regulation and receives significant attention from the Productivity Commission and Senate Select Reports mentioned below. A former employee of the Northern Territory government, Mr Alan Pedley, stated during the Lasseters project that: "The Northern Territory is to Australia what Australia is to the world: economically small and Isolated. We get it right in the NT and we get it right for Australia."

Queensland, Victoria, Norfolk Island, ACT and Tasmania have since all enacted legislation which has evolved and continues to evolve. It is expected that in 2000, several of these jurisdictions will enjoy new

internet gaming operations at an evolving level of regulatory compliance equal to or exceeding the Lasseters experience.

Gambling policy inconsistency

The fact remains, however, that relatively limited regulatory controls apply to Internet sportsbetting and wagering operations in Australia and insignificant regulations apply to on-line share (day) trading. In a submission to the Senate Committee Inquiry, the following propositions were presented:

> Perhaps the major difference between wagering and gaming is that the results of a wagering event are generally determined independent of the operator in that the result is based on some event whereby the punter may confirm the results independently. Alternately, the results of a gaming event tend to be based on a random selection process under the "control" of the operator.
>
> In any event, player fairness, security, protection of player funds and many other principles are common between wagering and gaming events, however to date there is an inconsistency in the level of controls placed on gaming and on wagering operators.
>
> In a society that promotes equality it continues to bemuse me that the share market is overlooked whenever the matter of problem gambling arrises. It has been said that those who criticise gambling play the stock market, but do woe to those who suggest they engage in the activity of "gambling". How is it that financial institutions will lend large sums of money to allow people to purchase shares, whilst to lend money to a punter to purchase chips or keno tickets, for example, is not permitted…and nor should it be."

I would add that with the advent of day trading and short term fluctuations, we have what is in effect wagering on a *random* event, as in a short space of time the "trend" is effectively non-deterministic. Australia has established a perception internationally of being the most tightly regulated Internet Gambling Jurisdiction in the world. However, this is not the case as the reality applies only to Internet Gaming at this point in time.

Productivity commission

On the 26 November 1999 the Australian Productivity Commission issued what is considered by many to be the most comprehensive research works on gambling benefits and impacts in the world to date. The report is titled, "Australia's Gambling Industries" and in chapter 18, "Policy for New Technologies", the primary focus is internet gambling. The most significant and indeed sound, key messages, follow:

1. Prohibition of online gambling would clearly reduce gambling problems associated with the internet, but would also eliminate any benefits of the technology.

2. Managed liberalisation – with tight regulation of licensed sites to ensure integrity and consumer protection – has the potential to meet most concerns, as long as the approach is national.
3. Uncertainty about the magnitude of the possible impacts of internet and interactive gambling, would normally suggest a more gradual implementation of liberalisation, but this may not be feasible given the nature of the technology.

The Productivity Commission Report does *not* suggest that internet gambling is the major factor in the incidents of domestic problem gambling.

Ministerial council

In a press release dated 19 December 1999, the Australian Prime Minister announced he would be adopting the Productivity Commission's recommendation of a national approach to problem gambling. He further announced, "I have written today to the Premiers and Chief Ministers proposing the establishment of a Ministerial Council on Gambling." The Prime Minister's position on internet gambling was also stated quite clearly, "I am particularly concerned about the effect of a rapid expansion of internet gambling and the government will be investigating the feasibility and consequences of banning internet gambling."

Such a statement is indicative of a limited understanding and an invalid assumption that a ban in Australia would have any effect on an Australian's ability to access internet gambling or the proliferation thereof.

Senate Select Committee on Information Technologies

In March 2000 the parliament of the Commonwealth of Australia published "Netbets: A review of online gambling in Australia". The report was produced by the Senate Select Committee on Information Technologies and is a well researched document produced with significant industry and community consultation. The key recommendation is Recommendation 1 – "The Committee recommends that Federal, State and Territory governments work together to develop uniform and strict regulatory controls on online gambling with a particular focus on consumer protection through the Ministerial Council on Gambling".

Again, good regulation and *not* prohibition has been recommended.

Foreign trade

Australia is perhaps the only country in the world with the exceptions of the USA, Canada and the UK to be positioned to establish a viable and credible Internet Gambling Industry on a massive scale. South Africa also has some potential to establish in the internet gambling market. Internet gambling and the resultant e-commerce opportunities positions Australia well to be a global hub of e-commerce. At this time,

Australia is the only country that is presenting a viable and credible regulatory regime. This regime at present has attracted significant interest from US based transnational corporations with significant brand names. It is also worthy to note that the Lasseters Prospectus suggests that 68 per cent of its cash players are American. This statistic demonstrably illustrates how ineffective prohibition on the internet (c.f. Kyl Bill) is.

Current Prime Ministerial position

It is worthy of note that the Australian Prime Minister's view remains unaltered since his press release on 16 December 1999. He has adopted a view to prohibit internet gambling, despite the best advice of two well researched federally funded government reports, detailed "responsible gambling" provisions in requirements defined by State and Territory regulators and demonstrable evidence of socially considerate measures employed in the Lasseters Online Site that do not apply in any terrestrial club, hotel, or casino.

State and territory regulation

Extent

There is quite a gap between the requirements on internet gaming and internet wagering/sportsbetting. The high level approach to regulation is essentially to take the same basic principals that are applied to terrestrial gambling and translate these to the activity on the Internet. These are:

1. Probity of operator key staff and owners.
2. Probity of gambling system supplier key staff.
3. Probity of independent testing company and staff (such as GGS).
4. of capability to establish and operate an Internet Gambling System.
5. Assessment of technology, environment and security against published technical specifications.
6. Assessment of the operations of the business and the technology against a documented set of Internal Controls and Operating Procedures.
7. Requirement for ongoing access to data.

The process from start to finish can take six to twelve months and cost upwards of A$5 million by the time the system and operations are ready to launch. Queensland, Norfolk Island and the ACT each have comprehensive requirements documents for internet gaming. These requirements alone constitute several volumes some two inches thick. A typical summary audit report, produced by GGS, commenting on the level of compliance is in the order of hundreds of pages and is supported by thousands of pages of attachments and appendices inclusive of many interim reports, audit trails and test scripts. To fully understand the complexities of the evaluation and audit of an operational Internet Gaming Operation against requirements requires a team of specialists.

Internal Controls

It is a general requirement that the Internal Controls (ICOP) fully describe and explain the licensee's operational procedures and systems regarding the conduct of interactive games and operations. In particular, ICOPs must include detailed information about the operation as follows:

1. Administrative systems and procedures, including but not limited to, the business plan, the chain of command, the organisational chart, the decision making processes leading to management's authorisation of transactions, delegations and position descriptions;
2. Records keeping procedures and systems;
3. Accounting systems and procedures, including a Chart of Accounts;
4. Internal and external auditing and reporting procedures;
5. Computer software that might be used in relation to accounting and administration;
6. Standard forms and terms used;
7. Procedures, where applicable, to advise players of the rules of the game, the statistical rate of return that the game provides to players and any other information necessary to enable the player to readily understand the game;
8. Procedures relating to the registration and identification of players;
9. Procedures relating to player betting requirements (bet limits etc) and player accounts;
10. The procedures for recording and paying prizes or winnings/dividends won;
11. Privacy protection procedures;
12. Dispute resolution procedures;
13. Disaster recovery plan and emergency backup procedures;
14. The procedures and standards for the maintenance, security, storage and transportation of equipment to be used for the conduct of games or betting/wagering;
15. The premises to be used and security measures taken to protect physical assets;
16. The procedures for using and maintaining security facilities, including access controls.
17. A substantiation that the systems meet all the Regulatory Audit Requirements.
18. A substantiation that the systems meet all of the Data Requirements,
19. Procedures for ongoing compliance with Technical Requirements document, including submission requirements,
20. System software development controls,
21. System software operational controls,
22. Implementation and user acceptance procedures,
23. Problem reporting and management procedures,
24. Details of security controls including player authentication and account security, and
25. Procedures to ensure information integrity and confidentiality of information.

Technology controls

The technological controls are quite extensive and relatively fluid given the rapid changing in technology. Government publishes technical requirements which seek to address the objectives that an internet gambling system be:

1. Compliant with the Act.
2. Secure,
3. Reliable,
4. Recoverable,
5. Stable,
6. Auditable.
7. Reportable.

And that game play be:

1. Based on a truly random event.
2. Based on principles of responsible gambling.

A comprehensive audit of an IGS is very specialised. GGS employ highly qualified and skilled specialists who have collectively established proprietary methodologies for the audit/testing and evaluation of e-commerce systems in a gambling environment. Typical evaluations involve:

1. Extensive review of documentation,
2. Source code reviews,
3. Code compilation,
4. Simulation,
5. Use of test tools,
6. Functional testing,
7. Empirical testing,
8. Staff interviews,
9. Theoretical analysis (e.g. rng and cryptographic algorithms),
10. Verification and validation of software,
11. Physical reviews of installations,
12. Logical and physical attacks,
13. Physical testing of hardware, and
14. Confirmation of access control lists, system parameters and other configurable items.
15. Research and recommendations to the regulator on advanced forms of control and/or obsolete regulations.

A compliance evaluation of an internet gambling operation must be undertaken with utmost due-diligence from well defined test scripts, by a consultant with a diverse range of skills to ensure risk to the operation is reasonably mitigated. Such an exercise is not an overnight experience and if not properly managed on the part of the Operator, can be quite expensive.

However, consider the likely consequences as reported by the *Sydney Morning Herald*: "A mysterious computer intruder has tried to extort $US100,000 from an Internet music retailer after claiming to have copied its credit card files of more than 300 000 customers…after the company did not respond to his demands, he said, he began placing credit card files on a web site on Christmas Day…The person

identifying himself as Maxim e-mailed the reporter a list of 198 credit cards as proof…before the site was closed, a traffic counter on the site indicated that several thousand visitors had downloaded more than 25,000 credit card numbers from the system."

Conclusion

Technology is driving policy and regulation. Gambling, can be regulated and Australia has the best reputation in the world for well regulated gambling. The medium on which the activity takes place, internet, cannot be regulated with any semblance of efficacy in the absence of International cooperation. Accordingly, regulation of the activity becomes voluntary on a medium without borders.

Prohibition through filtering is simply not viable if Australia is to compete in e-commerce in the global economy. Restriction of legitimate financial institutions would only serve to create new markets for private online banking and further diminish a government's fiscal control.

Due to reasons of domestic politics or foreign trade pressures, if Australia freezes progress or attempts to enforce a ban, this would serve no other purpose than to expedite both the loss of a significant export market off-shore, and dilute the current appeal of "voluntary regulation" as trust through industry self-regulation and "brand-names" are established and governments lose control of any compliance agenda. Attempted prohibition does nothing to protect consumers.

1. Jim Spigelman, Tony Berg
2. Victoria Thompson, Peter Thompson
3. Kirsty Peterson
4. Stephen Matchett, Gerard Henderson
5. Georgina Gold, Tom Mozina
6. Daniella Torsch, Alice Spigelman
7. Janine Burrus and guest
8. Kathryn Greiner, Peter Kennedy-Smith, Stephen Goddard

Photographer: David Karonidis

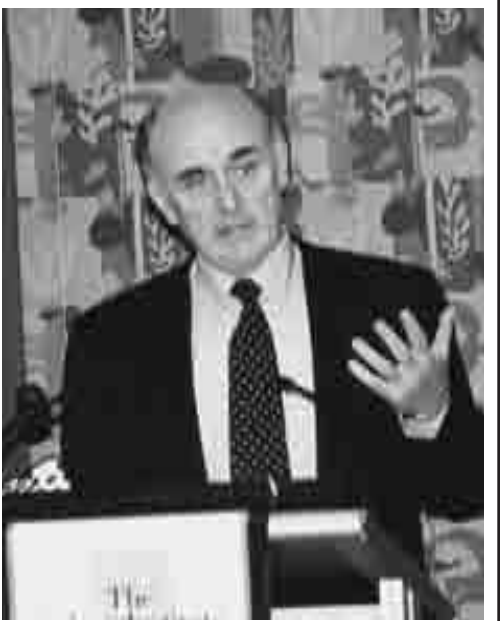

Photo – David Karonidis

Allan Fels

Professor Allan Fels is Chairman of the Australian Competition and Consumer Commission and something of a household name since the introduction of Australia's Good and Services tax. But, speaking for The Sydney Institute on Monday, 23 April 2001, Allan Fels chose an international topic for discussion and told his audience that, generally speaking, globalisation promotes competition and widens consumer choice. It is, though, also associated, in some cases, with anti competitive behaviour on an international scale, which "can pose problems for national governments which have difficulties in dealing with behaviour taking place in other countries that can affect their own economies".

GLOBALISATION
AND COMPETITION POLICY

Allan Fels

As we all know, the international factor in the economic activities of countries has been increasing greatly in recent decades. Trade has grown even faster than economic growth in the last 50 years – so also have foreign investment and international capital flows. There are more multinational companies than ever before – roughly 60,000 multinational companies and their 500,000 foreign affiliates account for about one fourth of total global output.

The causes of this include:

- Economic growth itself which both creates ever increasing demand for imports and also increases the capacity of economies to produce exports; it also generates greater amounts of savings which may be invested domestically and internationally to meet the greater investment demands associated with economic growth.
- Technological innovation. This pervades most fields of economic activity but is especially great in the areas of information and communication technology. A sector particularly affected by technological growth in these areas is the financial services sector, which, in turn, facilitates higher degrees of financial and economic interaction between economies in different countries.
- Falling transport costs.
- International, as well as domestic, liberalisation of trade, investment and economic activity.

Generally speaking, globalisation has positive effects on promoting competition and in widening consumer choice. However, it can be associated, in some cases, with anti competitive behaviour on an international scale and this can pose problems for national governments which have difficulties in dealing with behaviour taking place in other countries that can affect their own economies.

In this paper I will particularly focus on the areas of global cartels and global mergers, although I shall also mention some other areas where the global dimension to anti competitive behaviour is relevant, including the debate about the interaction of trade policy and

competition policy and some of the policy choices being discussed at the WTO and OECD.

Finally I will also discuss some of the issues for Australia, including the much asked question of whether merger law is hindering or helping Australia's competitiveness. My conclusion will be that merger law is making a strong positive contribution to the efficiency and competitiveness of the Australian economy.

Some of the key themes which I wish to emphasise are:

- the new forces of globalisation, new technology and liberalisation are generally beneficial for consumers and business and for the efficiency of the world and national economies that make it up;
- in some respects they can reduce the need for intervention by competition regulators; and on other occasions they call for changed regulatory approaches on such matters as market definition;
- however, on important occasions these new forces can give rise to new forms and new areas of market power, anticompetitive conduct and consumer exploitation;
- there is a need to apply the traditional principles of competition law and policy and consumer protection in these new cases;
- in some cases there is also a need to consider changes in institutional arrangements. For example where anticompetitive behaviour crosses national boundaries enhanced international coordination or even a combined international effort is required;
- the pressures from these new forces on the Australian economy make it more important than ever to apply a vigorous competition law if we are to have an internationally competitive economy.

Global Cartels

Global cartels, that is, cartels organised on an international scale, have long existed ever since the beginnings of international trade. There is a long history of cartels, in particular, during the nineteenth and early parts of the twentieth century. Indeed, in 1907 an important US antitrust case sought to end the tobacco cartel which had divided up world markets between British producers who controlled the UK, US producers who controlled the US and the rest of the world which was divided up and allocated to either British or American producers who agreed not to compete in one another's markets.

However, there appears to have been a sharp increase in the extent of global cartel activity, or at least in its detection, in the past few years. If there has been an increase in the amount of international cartel activity, rather than just an increase in the amount that has been detected, this is probably due to the impact of trade liberalisation.

Liberalisation is generally good for competition, but it tends to put pressure on firms that have dominated particular local markets without much international competition. Facing competition for the first time, some of them tend to get together with producers in other countries who also face similar pressures because of the global character of liberalisation, to divide up world markets and to agree on prices and output.

The vitamins case is the most spectacular example. Vitamins is an important product supplied to the food processing industry and the animal feed industry. There is also a small amount supplied to consumers directly. Food companies blend raw vitamins into things like bread, rice and juice. The animal feed industry buys huge amounts of bulk vitamins to produce healthier and faster growing livestock. An example would be huge chicken farms. The vitamins cartel affected $5-6 billion of US commerce. The worldwide effect would be much greater – over $20 billion.

There is evidence that the cartel increased prices by around 70 per cent during the 1990s.

The conspiracy appears to have begun in 1989 when executives at Roche AG, and BASF began holding talks about price fixing. They decided to carve up the vitamin market and to recruit other major vitamin makers to come in on the arrangement, like Rhone-Poulenc of France and Takeda Chemical Industries from Japan. Later, yet further vitamin producers joined the cartel. Nearly all world vitamin producers now face massive fines. Already Roche has paid fines of $US500 million and the total fines already collected exceed $US1 billion in the US alone. Fines in other countries and damages cases lie ahead.

The cartel appears to have operated in a fairly stable manner for over 10 years. There were frequent high level executive meetings. There were very detailed arrangements involved in the administration of the cartel, including careful budgeting, market allocation, price fixing and so on.

I think it is worth noting that vitamins are not produced very much in the United States. They are mainly produced in Europe and Asia. The American business culture is far more wary about entering into price fixing arrangements, although as I shall show in a moment, the Archer Daniels Midland's conspiracy shows that one must be wary about this kind of generalisation.

In February this year there was an Australian sequel when the Federal Court imposed record $26 million penalties on three subsidiaries of overseas animal vitamin suppliers for price fixing and market sharing in contravention of the Trade Practices Act. The conduct in Australia was a manifestation of arrangements made overseas by the parent companies.

Another important cartel concerned Archer Daniels Midland which in 1996 paid $100 million to settle US charges about price fixing conspiracies that occurred with European and Japanese to fix the prices of feed additives. Some top executives are now in jail. The Archer case was revealed by Mr Mark E Whitacre an Archer executive who secretly tape recorded company executives discussing price fixing with rivals. In fact, he very conveniently was able to arrange for the videoing, as well as recording, of these meetings for a couple of years. An entertaining tape of the proceedings of this cartel is available. There is an excellent book called *The Informant: A True Story*, by Kurt Eichenwald of the *New York Times* (2000).

The Archer Daniels Midland's case involved international cooperation between American, Japanese and European firms to fix prices in the worldwide food and feed additives industries.

Another important case concerned UCAR International Inc which pleaded guilty in participating in an international cartel which agreed to fix prices and allocate market shares in the US $500 million graphite electrodes industry.

The US is currently investigating a number of other international cartels. There are over 25 Grand Jury investigations. There are still some major cartels still to be disclosed. The above conspiracies involved secret meetings of high level executives in a number of countries around the world. Typically the meetings were held outside the United States where fear of imprisonment, high penalties and detection is greatest. A significant number of meetings were held in the Asian region.

Australian consumers are currently suffering from an international cartel that restricts their access to digital versatile discs (DVDs). The cartel, headed by major film studios in agreement with the manufacturers of DVD players, has divided the world into regions. This ensures that DVDs on sale in Australia will only function on a DVD player licensed for region 4 that includes Australia. The stated aim is to protect cinema ticket sales by preventing people viewing movies on DVDs in their homes before distribution to cinemas. The Australian subsidiaries of US film companies have been requested by the Commission to explain their actions. It will then decide what action can be taken.

I believe that the existence of international cartels on a rather large scale is an important reason why steps need to be taken to enhance the extent of international cooperation in competition law and also why every country needs to consider having a competition law and policy of its own.

Global mergers

In recent times there has been a spectacular increase in the extent of international merger activity, in one sector after another finance, communications, oil, airlines, pharmaceuticals, automotive, professional services and so on.

There are in fact more mergers than ever before. Worldwide merger and acquisition activity reached $US3.4 trillion in 1999. In the US alone, the dollar value of mergers reported annually increased from $US169 billion in 1991 to $US1.9 trillion in 1999 and the 5,000 mergers reported in the year 2000 are a three-fold increase over the past four years.

There are more mergers affecting many countries at the one time than ever before. Assets, customers, suppliers, actual competitors and potential competitors of merging entities are scattered across a growing number of countries resulting in more national markets being affected by multi country mergers.

Mergers between large corporations affect a growing number of national markets. As tariff and non-tariff barriers are reduced, markets are deregulated, technical standards are harmonised, international transportation and communication networks improve, information technology matures and electronic commerce grows, markets become increasingly global, more corporations turn multinational, and markets can become exceedingly concentrated in some cases with the result that a growing number of mergers affect competition in a growing number of national markets.

At the same time to look at the matter from another perspective, more multinational firms are becoming exposed to merger review processes applied by a large number of national competition authorities. There are more competition authorities than ever before. Some 90 countries currently have, and about 20 others are in the process of having competition laws; more than 60 countries have premerger notification requirements, with Australia being something of an exception.

For the most part, global mergers are not anti competitive and pose no major challenge to the global economy's major competitiveness. Indeed, in many cases, they enhance competitiveness and improve economic efficiency by creating more efficient arrangements for international business transactions.

Whilst in most cases the reason for mergers occurring on a global basis reflect simple commercial logic without harm to competition nevertheless we must recognise that as in the case of global cartels some global mergers may have the aim of stultifying competition. Just as with global cartels there may be cases where trade liberalisation threatens firms with market power created or strengthened by trade barriers. As a result some firms in different countries that were previously largely

protected from competition by trade and investment barriers face competition between themselves for the first time and may decide to merge.

It is therefore important that we be vigilant about global mergers.

Can small countries cope with Global Mergers?

I am often asked whether in Australia or indeed in other smaller countries global mergers pose an economic threat with which we are powerless to deal.

My answer is, for the most part, the global mergers are not anti competitive. Most of them are logical commercial developments occurring in response to the forces of globalisation, technological change and liberalisation. For example, many of the financial sector mergers in Europe are a response to the advent of the Euro which is leading to the emergence of a single European financial market. In the United States many of the financial mergers are a response to deregulation of financial markets which had previously prohibited operations on a truly national scale within the United States.

Likewise, telecommunications mergers have a great deal to do with the emergence of a liberalised approach to telecommunications and the breaking down of barriers to international transactions. Similarly with airline alliances.

Another reason why these mergers do not deeply concern me is that these days in particular, major anti competitive mergers are likely to be stopped by overseas authorities. In this respect, the United States after a rather quiet period in the 1980s has become far more active in the public enforcement of anti trust law. The early signs are that the Bush Administration will continue to be vigilant about mergers, even if it eases pressure a little on monopoly behaviour. The European Union is also far more active than in the past. Japan and Korea are also stepping up some of their anti trust activities. Indeed in some respects the real issue is that some global mergers have to be approved by so many regulators in so many countries that greater cooperation between regulators is required to prevent unobjectionable mergers from being inadvertently blocked.

However, it still remains the case that some mergers that occur internationally can damage competition and will force consumers to pay more in certain countries with particular market structures. Are these countries powerless to act?

My own view is that generally they are not, although there may be some exceptions to this generalisation. I shall take Australia as an example. When Gillette tried to take over Wilkinson Sword in the wet shaving market, the Commission opposed the merger successfully in the Federal Court of Australia, even though the transaction occurred offshore. The Commission succeeded in having a divestiture imposed

upon the companies with the selling off of the Wilkinson Sword brands to an independent buyer for ten years.

This case established the jurisdiction of the *Trade Practices Act* with respect to off shore mergers and showed that strong remedies are possible.

Moreover, when a merger occurs that is anti competitive, it is often possible to resolve it in a manner that does not damage competition. A recent example was the attempt by the British American Tobacco Company (trading in Australia as WD & HO Wills) to take over Rothmans. In some countries this would not have damaged competition. However, in Australia it was clear that it would. There were only three companies WD & HO Wills, Rothmans and Philip Morris and imports were fewer than one per cent. The Commission considered that a merger of two of three big players would reduce competition. It opposed the merger. Following this, British American Tobacco and Rothmans decided to release 17 per cent of the total brands of cigarettes on the market and they were acquired by Imperial Tobacco, a major international tobacco organisation which has now entered aided by an initial 17 per cent market share and the introduction of its own well established brands into Australia. Some coincidental changes in tax law will also boost imports. As a result, there remains three strong credible players in the Australian market and the original merger between British American Tobacco and Rothmans has been able to go ahead in Australia as well as in other parts of the world.

The point is that very often practical solutions can be found to seemingly difficult problems.

Another case we have dealt with was the Coca-Cola proposed acquisition of Schweppes. This was an interesting merger because it was never proposed that it should occur in the US where there were clear antitrust problems. The merger did not proceed in France where there were antitrust problems which were made clear in the Orangina case. Moreover, there were problems with the merger in the European Union.

Australia opposed the merger. It noted strong opposition by many outlets that sell Coke. Following that, Coca Cola put two proposals to try and meet our concerns but, in each case, the Commission believed that they could not overcome its concerns. The essential concern of the Commission was that the merging of the two sets of brands, ie, Coca-Cola brands and the powerful international brands of Schweppes. The undertakings to which I have referred and which were rejected by the Commission, all failed to address this fundamental concern. They involved concessions about other minor brands and some other arrangements. The merger did not go ahead in Australia or in many other countries which shared our concerns.

Another interesting solution has occurred in a couple of cases where the Commission had initial concerns. When BHP, Australia's major steel company, wanted to take over New Zealand Steel, the

Commission believed that there could be some anti competitive effects in certain parts of the steel market, even though international trade would take care of many problems. However, when the Commission objected, a practical solution was found. The Government agreed to reduce tariffs on an accelerated basis in relation to those parts of the market where there could have been an anti competitive effect.

Accordingly, it is my provisional view that many of the problems for competition created by global mergers can be met by appropriate action in domestic markets. I cannot rule out the possibility that cases may arise where an offshore merger takes place that is harmful to Australia and for which it is not possible to fashion an appropriate Australian solution.

Market power

The abuse of market power is one of the key issues for competition policy. However, it is not my intention to discuss issues of the abuse of market power occurring on a global basis other than to highlight one point. This is that the Microsoft case being pursued in the United States is essentially about anti competitive arrangements in the United States which have a global effect. It is part of the global competition picture. Incidentally, the Microsoft case illustrates the importance of applying antitrust law to areas of the economy which are characterised by high rates of technological innovation, but that is a subject for another day.

Trade and competition

Before proceeding further, I would like to deal with one subset of the problems concerning the international dimension of competition policy. This concerns the interaction between trade policy and competition policy. I emphasise that this is only one aspect of the global competition policy scenario but this fact is not always recognised.

The essence of the debate about the interaction between trade and competition policy can be summarised as follows below.

First, trade policy liberalisation can be frustrated by failures in the enforcement of competition policy. For example, supposing a country liberalises trade, allowing a potential flow of imports following the reduction or elimination of trade barriers.

The benefits to consumers of this liberalisation can be defeated by restrictive practices in the liberalising market. For example, retailers in the liberalising market may reach agreement with manufacturers in the home market not to accept imports. Entry into that distribution sector may be difficult. Trade policy liberalisation in such cases can clearly be frustrated by failures to enforce competition policy properly, eg, if the

regulator does not exist or fails to take action to stop anti competitive practices.

Second, it is important to note the reverse relationship. Trade policy can be highly anti competitive. For example, nearly all forms of import protection whether they be quotas, tariffs, anti dumping laws and so on can reduce competition and damage consumer interests. Trade policy can be usefully regarded as an area of competition policy that has gone badly wrong! It is important that the debate about the damaging effect on trade of failures in competition law enforcement be balanced by recognition of the damaging effects on competition and consumers of trade restrictions.

Third, it is important to note that in this debate there is another extremely important variable which may be at work regulation. Very often it is Government regulation rather than failures in the enforcement of competition law that are the true obstacle to imports, to trade liberalisation working and to competition working. What is needed is a three-way debate about the relationship between trade, competition policy and regulation, rather than a debate that is focussed too narrowly on trade protection and failures in competition law and enforcement.

Intellectual property laws

Intellectual property laws are an interesting example of the interaction of trade, competition and regulatory laws.

Intellectual property law has, in my view, been captured by the interests of producers in countries which are net exporters of intellectual property. In particular, the statutory restrictions on parallel imports under copyright law have enabled massive unjustified price discrimination between countries, have hindered and distorted competition and imposed draconian restrictions on international trade. In this part of the world, especially, we are losers from these laws.

I am heartened that some change is occurring in some parts of the world. New Zealand has abolished parallel import restrictions, Australia has removed restrictions in some areas and Japan's Supreme Court has relaxed them in patents.

There is a very lively debate in Europe at this very moment about parallel import restrictions. Generally speaking it was long ago recognised as incompatible with the free trade principles of the European Union that there should be restrictions on parallel imports of any products including those products protected by intellectual property law. However Europe has generally prohibited parallel importing of copyrighted, patented and other intellectual property protected products from the rest of the world. Just recently some courts in Europe have opened the door a little by indicating that the restrictions do not apply unless there are very explicit indications from

the owners of copyright that parallel imports are restricted. A major case is currently before the European Court on this topic.

Another important point is that within the European Commission itself there is a policy, as distinct from legal, debate about whether parallel import restrictions should be removed. Sweden, which currently has the presidency of the European Union, is supported by a number of major countries in pressing for changes to the rules but with strong opposition apparently from France and Germany.

Even in the United States there is a debate about parallel import restrictions. The Supreme Court ruled that in relation to products made in the United States and exported to the rest of the world that the restrictions on parallel imports did not apply where those products were reimported into the United States. More recently there has been a lively debate about the justification of parallel import restrictions in relation to pharmaceutical products which are on sale more cheaply in countries such as Canada.

In Australia the Parliament is currently debating government proposals to remove totally import restrictions in relation to books and computer software.

There have been some improvements in the position concerning CDs as a result of the reforms. The CD reforms were introduced at around the same time as the Australian exchange rate fell sharply and this meant that the extent of price reductions was not very large. However if one takes real CD prices at the time of the reforms and adjusts them for changes in the exchange, then the current level of prices is some $7 below that projection. In other words in the absence of reforms it is arguable that the price of compact discs would have risen to around $35 whereas they are now priced at around $28. Of course in some major outlets which have purchased parallel imports the prices of new release CDs are around $20.

The ACCC is currently involved in litigation before the Federal Court of Australia in which it alleges that certain record companies acted unlawfully by organising international boycotts of Australian markets and by pressuring retailers in Australia not to accept parallel imports. If the Commission's allegations are upheld it will be a demonstration of the need to back-up trade liberalisation with the appropriate application of competition laws to stop the benefits from being eliminated by anticompetitive behaviour.

Another important reform to parallel imports concerns the legislation which now prevents the use of copyright in packaging and labelling from being used to prevent parallel imports. The legislation covers a wide range of products including food, drinks, clothing, footwear, toys, spare parts, cleaning agents, perfumes and many others.

The Ergas inquiry into the relationship of intellectual property laws and competition policy has concluded that all the restrictions on

parallel imports should be removed rather than a piecemeal approach that is that the New Zealand approach should be adopted.

Policy issues

Let me now turn to some policy issues. First it seems obvious that in an economy characterised by ever increasing degrees of economic interaction between countries with ever greater activity on the part of multi national firms with global cartels and global market power that some kind of international effort is needed to deal with some of the problems. National governments alone cannot deal with all global problems.

Not only is it clear from the preceding discussion that more steps need to be taken at an international level to deal with global and other forms of global anticompetitive conduct, but it is also clear that there are some areas in which business would benefit from the adoption of a global approach eg the improved processes for dealing with multi-jurisdictional mergers.

Business is becoming increasingly organised on a global scale but competition policy is still largely organised on a national basis.

By and large competition policy has lagged behind other fields of corporate regulation fields such as those concerned with fraud, tax evasion, money laundering and so on in regard to international cooperation.

A target for all regulators in the new century is greater cooperation to stem the power of international cartels. This includes a greater sharing of information, often lacking in the past. Progress is being made, however, as demonstrated by a bilateral treaty with the US to share confidential information. There is also increased cooperation between the US and the EU and more discussion in international forums.

There is no international regulator to combat the cartels which means the regulators of all countries must work as a team.

The OECD is one forum in which a great deal of activity is occurring. A key emphasis is on "convergence". The idea here is to have member countries within the OECD adopt as far as possible similar competition laws and similar vigorous levels of enforcement of them. Equally importantly a convergence is sought in relation to the many countries who are not members of the OECD who are currently introducing or considering introducing competition laws. The OECD is playing a significant role in ensuring best practice in all these countries.

Regarding the issues of the interaction of trade and competition policy discussed earlier, much of the intellectual input into this subject is coming from the OECD but even more importantly the World Trade Organisation (WTO) has established a working group discussing issues about the inter-relationship between trade and competition policy.

Recently there have been important steps taken towards establishing a Global Competition Initiative and/or to establish a

Global Competition Forum, the latter being at the OECD. This is being driven by a number of factors. The USA is uncomfortable with the idea of the WTO having decision making powers in relation to competition questions and is keener on a separate initiative. The European Union also supports the idea of a global competition initiative. The OECD for all its valuable work is seen as having some limitations because its membership does not include major developing countries and it is an organisation made up of governmental representatives only.

Accordingly there is discussion of taking an initiative which would extend beyond the OECD or the WTO but be complementary to them.

There is virtually no thought at this stage of establishing a world competition authority nor of establishing a world competition law. Indeed most people think that such an ambitious undertaking would be likely to distract attention from the real progress being made on a day to day basis in increasing the cooperation and convergence between countries.

Globalisation and mergers in Australia

The Commission has persistent critics who claim that merger policy is harming the Australian economy, is driving company headquarters offshore and preventing the development of large Australian companies that can compete against the international conglomerates on the Australian market and beyond.

The virulence and persistence of the attacks on the Commission raises the question of motive. Do the attackers want the unfettered right to establish monopolies so they can dominate the market and, by raising prices, earn greater profits? This may bring cheers from shareholders but not necessarily from consumers or other companies that buy inputs from the monopolies. Australia is far from alone in its interest in mergers and the Commission's critics should realise that governments worldwide have created strong laws to prevent the creation of cosy cartels. They have also empowered strong anti-trust agencies to enforce laws to protect consumers and small business.

If our most persistent critic, the Business Council of Australia, were serious about promoting large internationally competitive Australian companies it would acknowledge the benefits of competition. Would Australia's big companies be internationally competitive if they had to secure their raw materials from a monopoly supplier, export through a monopoly transport company or raise finance from a monopoly bank? And what about consumers? If we had no merger law in Australia, consumers could shop at Woolcoles supermarket, buy petrol at Moshell and get beer from Carlion. Such monopolies would surely mean no competition.

The firms the Business Council represents are the major winners from more competitive markets. Strong domestic competition has lowered their costs and enabled them to compete internationally.

National champions

It is claimed that if we don't change the merger provisions of section 50 of the Trade Practices Act then Australian companies will be prevented from reaching a size big enough to compete in global markets. Some of you will have heard this called the "critical mass" or "national champion" argument.

My initial response to the national champion argument is that obstacles to export growth are not necessarily overcome by firms developing dominance in the domestic market. A certain size is not a prerequisite to export success, a fact often demonstrated by the overseas success of moderate-sized and even small Australian firms. Observers of the rural economy following the dismantling of compulsory marketing schemes have noted the drive and initiatives of rural cooperatives and individual farmers.

I do not believe that the Trade Practices Act or the Commission are preventing many mergers and certainly not those ones which could be justified on international grounds.

Each year the Commission opposes fewer than five per cent of the mergers notified to it and of those a number are often resolved by means of undertakings. Over the last five years 1,108 mergers and acquisitions have been considered by the Commission. Thirteen mergers have been opposed. A further 28 mergers have been resolved by undertakings. Appendix A provides a list of mergers that the Commission has opposed and a further list of mergers that the Commission has approved subject to undertakings.

In some respects these figures overstate and in other respects understate the effect of the Trade Practices Act.

The numbers overstate the degree of intervention by the Commission because many mergers are not notified to or considered by the Commission. Unlike most other countries there is no compulsory requirement to pre-notify mergers to the Commission. As a rule, the Commission only considers mergers where there is some kind of competition issue or some kind of referral to it by other parts of government or by businesses wishing to be ultra cautious. The vast majority of mergers in Australia either do not raise issues about competition or are too small to qualify for consideration by the Commission under the Trade Practices Act.

In some respects the statistics may understate the effect of the Trade Practices Act. There are certain mergers that no business would consider because they are unthinkable under the Trade Practices Act.

It is also sometimes suggested that many mergers are considered by business as possible but they are not proceeded with because it is known that the Commission will oppose them. I am sceptical of this argument. The Commission is sounded out about mergers on a confidential basis but not a great deal. The Chief Executive Officers of most Australian businesses are not shrinking violets. They are not afraid to sound out the Commission about mergers that they dream about and I consider it improbable that there are many cases where mergers that might have some justification are not advised to the Commission at least informally. The fact is, however, that this does not occur on a significant scale.

It is worth noting that the top ten takeovers in the year 2000 by dollar value attracted very little Commission interest and there was ultimately no opposition. The top ten takeovers proposed were:

Target	**Bidder**	**Value $m**	**Result**
1: Woodside Petroleum	Shell Petroleum	9,866.67	Current
2. Colonial Limited	Commonwealth Bank	7,611.52	Successful
3. Comalco Ltd	Rio Tinto Invest	5,325.90	Successful
4. North Ltd	Rio Tinto Invest	3,501.73	Successful
5. AAPT Ltd	TCNZ Aust	2,211.98	Successful
6. Advance Prop Fund	Stockland Trust	1,167.78	Successful
7. QCT Resources Ltd	Metcoal Holdings	895.50	Successful
8. Email Ltd	Smorgon Distribution	815.49	Successful
9. Advance Prop Fund	Mirvan Funds	791.66	Unsuccessful
10. Email Ltd	Smorgon Distribution	785.59	Withdrawn

Source: ***Freehill Hollingdale & Page Year 2000 Merger & Acquisition Legal Advisor Survey***

Source: ***The Australian*****, April 12, 2001**

An examination of mergers from earlier years shows the same.

Another important fact is that the Commission has not opposed mergers in the last decade where import competition or potential import competition is significant. There is a very long list of examples. I shall merely mention BHP's acquisition of New Zealand Steel and later of Tubemakers; AMCOR's acquisition of APPM (later split up by AMCOR); Email's acquisition of Southcorp; North Ltd and Rio Tinto; but there are many many others (they are listed in our Annual Reports).

Thus, in considering mergers the potential or real import competition is assessed, an important factor because of globalisation. If import competition is an effective check on the exercise of market power, it is unlikely the Commission will intervene in a merger. It has

not rejected any merger where imports, independent of the merged parties, have been sustained at more than 10 per cent of the market.

It is in the sectors of the Australian economy exposed to international competition that the argument that firms need scale to compete globally is most relevant. Yet in this sector the Act is simply not an obstacle at all to mergers.

In sectors not exposed to international competition, some mergers are opposed, although I stress that this is only a minority.

We also look at "other factors" including product substitution, entry barriers, whether the merged firm will face countervailing power in the market, whether the merger will remove a vigorous and effective competitor or whether it is pro or anti competitive in general.

Often a merger is allowed to proceed if undertakings are given. In May last year the Commission decided not to oppose the acquisition of Colonial Limited by the Commonwealth Bank subject to significant undertakings to minimise any decline in competition.

As I have said earlier globalisation and other factors require change on the part of the Commission in its approach to the analysis of competition. A major change in our priorities has been the fact that the Commission in the last ten years has not opposed mergers where there is import competition. However there are other areas in which our approach to competition analysis has changed in line with market change. One example concerns the analysis of the banking industry. Ten years ago the Commission considered that there was a lack of competition in the market for home loans and had it been considering any bank mergers at that time it would have been concerned at the effects on the home loan market.

However since the advent of mortgage-originators there has been vigorous competition and the Commission would be unlikely to oppose mergers between banks on the grounds that they lead to any reduction in competition for home loans.

Likewise 20 years ago the Commission looked at the brewing industry on a State by State basis. Each State seemed to be insulated from other States. However during the 1980s interstate competition increased. When brewer mergers were presented to the Commission it looked at them on the basis that Australia has a national market in brewing production reflecting this change in market circumstances. There are many other areas where economic change brings about changes in market definition.

Incidentally it should not be thought that just because business is concerned with emphasising global concerns in markets that this concern is universally shared. Parliament is currently considering amendments to the Trade Practices Act which would emphasise the need to take into account regional elements of markets in assessing markets in relation to mergers.

Authorisation

The merger provisions are not an obstacle to firms achieving the economies of scale needed to be internationally competitive. The key is that there must be public benefits. In deciding whether to authorise a merger, the Commission considers all the potential public benefits. Under the Trade Practices Act, public benefits are specified as including a significant increase in the real value of exports and significant import substitution. The Commission must also take into account all relevant matters relating to the international competitiveness of Australian industry. They include whether a proposed merger would have adversely effect the ability of smaller companies to expand or develop export markets.

Domestic rivalry is the critical factor in export success. Strong domestic competitors create highly visible pressures on each other to improve. Domestic firms are under pressure to export so they can grow. There is also pressure to innovate. So the removal of competitiveness is not necessarily good for exports.

The authorisation provisions of the Act are available to those firms wanting to ensure international competitiveness through acquisition. A merger can be authorised even if it will lessen competition providing there are compensating public benefits.

Moving offshore

It's inevitable that more Australia companies will move offshore. After all, we have moved into the era of globalisation. The company names quoted by the Business Council in briefings to the media as likely to decamp for overseas have had few problems with the Commission. They include BHP that acquired New Zealand Steel without objection from the Commission, AMP that acquired GIO, Brambles, Lend Lease and NAB, (which acquired MLC) none of whom have had a merger blocked by the Commission. Even Pioneer, sometimes quoted as an example, did not apply to merge with CSR.

Preventing mergers, it is claimed, will force companies to re-locate overseas. There is no evidence of this.

There are several reasons why firms go offshore and merger policy is at the bottom of the list. A major reason is taxation policy, others are to get closer to their customers and that gaining market entry may be difficult for offshore suppliers.

The Business Council's agenda over the years has been to weaken merger law. Some CEOs want a soft law; others want no law even if this means an economy with a bunch of monopolies that cannot compete internationally.

The impact of anti-competitive mergers and joint ventures can be a loss of consumer welfare and an adverse impact on the costs of affected industries. Remember, once industry structures are in place,

they are difficult to alter and may lead to higher prices, lower quality, poor service and a dearth of innovation.

A merger might create supply bottlenecks for smaller companies and restrict market entry or access to crucial facilities. Third parties must have access to supplies at a competitive price.

The argument underlying many claims for mergers is that in fact Australian firms should be allowed to merge in Australia and thereby to achieve higher earnings which can be used to subsidise their attempts to enter and compete successfully in overseas markets. In other words sometimes the argument amounts to no more than that the Australian consumer should be expected to subsidise firms that want to compete internationally.

Ultimately in fact they are being asked to subsidise consumers in other countries. This is a difficult argument to accept.

It is also sometimes argued that what is needed in Australia is not a merger law but appropriate laws to regulate possible anticompetitive activity that might occur following a merger. When this point is pursued it is often not backed up by proposals to in some way strengthen our present laws. The argument does involve a much higher degree of regulation that many would find acceptable. The Commission for its part does not as a matter of policy accept the idea that a merger should be permitted providing that there is price regulation of some form once it has taken place. It believes in nipping the problem in the bud. It is also very often the case that the Trade Practices Act for all its virtues is not able to deal properly with anticompetitive conduct that occurs after a merger. Suppose two firms merge and this increases the possibility of collusion with other firms in the industry. Cooperation between firms is not unlawful under section 45 of the Trade Practices Act unless unlawful communication between them can be demonstrated to a Court. If a merger merely makes it easier for firms to cooperate lawfully and to raise prices as a result there is nothing that can be done about it under the Trade Practices Act other than to block the merger in the first place. Likewise there are similar significant restrictions on the use of section 46 of the Trade Practices Act to deal with behaviour which amounts to an abuse of market power.

Positive agenda for merger policy

So far I have been discussing globalisation and mergers. I would like to end by emphasising that merger law plays an extremely important role in the less competitive parts of the non-traded goods and services sector of the Australian economy. Of particular importance is its role in deregulating industries. Mergers and other forms of anticompetitive behaviour can play an important role in diminishing competition. The Commission is mindful of the fact that there is need for structural

change in many deregulating areas and only occasionally blocks mergers in these areas. However this is a key area where some mergers can undo the procompetitive effects of deregulation. This will require scrutiny in the years ahead.

Deregulating sectors

The real agenda of merger policy relates largely to the deregulating sectors of the economy. Deregulation gives rise to circumstances in which mergers are likely to occur. Some mergers are necessary for efficiency and should not be blocked. Others are sought to undo the pro-competitive effects of deregulation and may need to be opposed.

In recent years State, Territory and Commonwealth governments have initiated various pro-competitive reforms, involving horizontal and vertical disaggregation of government owned monopolies, corporatisation or privatisation and the removal of various restrictions on the operation of free markets. These initiatives were given further impetus by the Competition Principles Agreement, whereby all governments agreed to a systematic review of all legislation restricting competition.

As a consequence of this, the assessment of privatisation proposals has become a much more significant part of the Commission's work in recent times. In many cases involving individual asset sales, a number of bidding consortia require individual consideration. The Commission role is to ensure that the acquisition of an asset does not result in a substantial lessening of competition in a market. In assessing privatisations, the Commission considers the existing interests of all bidders.

In the great majority of cases, bidders for privatised assets do not raise competition concerns and therefore do not raise problems under the Act. However, In the case of certain asset sales in the Victorian electricity sector the Commission did object to some bidding consortia. The Commission did so where it took the view that the interests of certain consortia parties would have raised potential competition concerns through horizontal linkages in the Victorian electricity generation sector.

In the case of the privatisation of Hazelwood power station, for example, the Commission raised its concerns with one bidding consortium. No further action was taken as the structure and composition of the consortium were changed during the course of the sale process in such a way that the Commission's initial concerns were no longer relevant to the bid. In another case involving the sale of Loy Yang A power station the Victorian Government sales group required bidders to give certain undertakings addressing the Commission's competition concerns about board representation and information flows.

In performing its assessment of any proposed acquisition, one of the matters which the Commission must take into account is the likelihood

that the acquisition or merger would result in the acquirer being able to significantly and sustainably increase prices or profit margins.

Network industries can differ from others in that market power and the associated ability to increase prices is not always proportional to the amount of capacity controlled by any particular organisation. Market power can also arise through technical characteristics of, for example, electricity generators – for example, at peak periods gas or hydro generators with the ability to "ramp up" quickly may have greater market power than base load generators with larger capacity.

The Commission has also focussed on mergers and acquisitions within the electricity industry because of concerns arising from the fact that the sector is not subject to the competitive discipline of import competition and because of the lack of direct substitutes for electricity.

In its authorisation determination on the National Electricity Code, the Commission expressed concern over the structure of the market in a number of jurisdictions. The issue of market structure is not only crucial at the commencement of the National Electricity Market (NEM) but will be of on-going interest, particularly in respect of possible re-integration of firms participating in the NEM. Concerns also include possible mergers within each segment of the market, arrangements whereby NEM participants operate in upstream or downstream sectors (such as a generation company also operating a retailing business) and merger proposals between different energy suppliers (such as an electricity industry participant buying a gas industry participant).

Convergence

The last issue of convergence is one that the Commission is likely to have to consider in assessing mergers and acquisitions in the utilities sector in the future. There have, for example, been recent reports in Australia of joint ventures and acquisitions involving telecommunications companies and energy distributors and retailers. The development of multi-utility service provider companies is a logical further step.

Convergence raises challenges to effective competition policy, in terms of possibilities for regulatory "bypass" and for incumbents if the policy approach and the manner of regulation is uneven across the different industry sectors. It can also be argued that convergence hold the potential to create substantially-resourced business units holding market power. At the same time however, convergence may lead to industry growth and diversity and therefore lead to greater competition between products and greater choice of suppliers for customers. There are arguments for convergence in terms of economies in carrying out common functions, for example integrated billing for energy; reduced consumer transaction costs. These benefits are likely to be maximised

by having an integrated regulator which takes a consistent approach across industry sectors.

Reaggregation

Another issue that the Commission is likely to have to consider in the near future is that of reaggregation of utility companies. Consider for example, the possibility that in Victoria the five power generation companies seek to merge or to take over or to be taken over by the distribution companies. Of course there are some cross ownership restrictions built into Victorian law (until around 2002). If these mergers went ahead they could undo the pro-competitive effects of the Victorian divestiture of the former State Electricity Commission of Victoria. Likewise when deregulation gives rise to the replacement of state by national markets, firms often manoeuvre and merge in order to cope with the new situation. Again sometimes there are considerable efficiency gains, but at other times with considerable anti-competitive effects.

To take the energy industry as an example, there are several kinds of mergers which may arise for consideration in future. First, horizontal mergers within a state, for example. between power generators or distributors within one state located in the same state. Secondly, there may be vertical mergers between, for example, generators and distributors in the state. Thirdly, there may be conglomerate mergers between different utilities, for example, between gas and electricity utilities, in the distribution and or retail field. Fourth, there may be interstate mergers combining some or all of the above elements.

These matters will fall to be assessed under section 50 of the *Trade Practices Act*. In assessing them, one background factor worth noting is that the ownership structure of the energy industry and some other deregulating industries has been greatly affected by public ownership arrangements over the years. The ownership pattern which might have emerged in a privatised market subject to competition laws was not present owing to the preference of most Governments for the public utilities to have both horizontal and often vertical integration. Clearly the deregulation of current public utilities brings advantages compared with the artificial integration established by Governments. For example, the Victorian disaggregation of the electricity industry would seem to represent an improvement over the pre-existing monopoly arrangements. However it is not especially likely that an initial disaggregation will yield the optimum ownership patterns in the industry. In free markets, reliance is placed on the workings of the capital markets to achieve more efficient ownership arrangements and on competition policy to make sure that those arrangements are not anti-competitive (unless they can be shown to be in the public interest). The present Victorian electricity market starts without the benefit of these processes unfolding over the years. It is quite likely that restructuring pressures will arise to create more efficient arrangements.

The possible efficiency benefits of such mergers will need to be recognised and accepted under the *Trade Practices Act*. Equally however, it will be important to ensure that mergers are not simply anti-competitive and designed to undo the pro-competitive effects of deregulation.

These kinds of considerations apply to all mergers in sectors of the economy undergoing deregulation.

Merger policy

Merger policy makes an important contribution to the achievement of a competitive and productive Australian economy. Regulation of anti-competitive mergers is an important part of National competition policy. Trade practices merger law conforms with the principles of natural competition policy agreed to by all Australian Governments when the Hilmer Review was established. These principles included:

- No participant in the market should be able to engage in anticompetitive conduct against the public interest;
- Conduct with anticompetitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review, to demonstrate the nature and evidence of the public costs and benefits claimed. (See Hilmer Inquiry, Terms of Reference).

Merger policy is not some necessary evil. Rather it has a positive contribution to make to Australia's international competitiveness. If mergers are allowed to occur without the application of competition law, then our exporters and import competitors will be supplied uncompetitively and inefficiently and their capacity to compete in world markets will be hindered.

A general point which needs to be made about mergers is that most of the matters that receive detailed consideration from the Commission are mergers which are close to the margin, that are, in other words, borderline. Critics could sometimes argue that there is inconsistency in decisions. Whilst I do not agree with this, the significance of the criticism must be placed in context. When a series of close mergers is considered by the Commission, it is not so difficult to mount a case of apparent inconsistency. Often there will be very similar structural circumstances, but the Commission will go in different ways depending on the weight accorded to particular factors. The fact that the Commission has to make difficult "on-balance" decisions about a few borderline mergers each year does not mean that there is not general consistency in the application of the Act to the vast majority of mergers which it must consider.

Wattyl/Taubmans

There are always some contentious decisions. One which has been discussed in recent years has been the Commission's treatment of the mergers in the paint industry. The Commission was informed in August

1995 of the proposed merger of Wattyl and Taubmans. It advised the companies that it would oppose the merger. They eventually sought authorisation the following April and the Commission refused the authorisation. Just as the Tribunal hearings began Taubmans was acquired by a new entrant to the market.

There has been some comment on the delay in the matter. It was certainly not the fault of the Commission. The question of paint mergers have been discussed very extensively during the Cooney Senate inquiry into mergers and the Commission's concerns about paint mergers had been made very clear. When the Commission was informed in August of the proposed merger, it promptly advised the parties of its very considerable concerns. They chose however not to go to court or to seek authorisation until April in the following year. It is not surprising that in this time another buyer emerged. Throughout the period from August until April, the Commission continued to make its attitude clear. At one stage there was a serious proposal to resolve the issue by Wattyl selling at least one of its major brands. It is understood that this proposal was recommended by management to the board of Wattyl, but the board rejected the compromise.

There are two possible views of the merger between Wattyl and Taubman. The first was that the combined entity would have a market share of around 45 per cent, approximately equal to the share of Dulux. It was argued that a new, larger, stronger firm could compete more vigorously against its big competitor.

The other view was that the competition between Wattyl and Taubmans was very important for the promotion of competition generally in the paint market and that their merger would create a much quieter state of affairs in which two big firms co-existed comfortably. The Commissions market enquiries tended to suggest that the latter was more likely to occur.

Was the outcome a good one? There is a strong argument that the final outcome has been highly desirable. Following the acquisition of Taubmans a merger occurred between Taubmans and Bristol which has led to a state of affairs in which the paint industry now has three strong national competitors. Had the Commission not opposed the merger, there would have only been two competitors and it is the Commission's view they would not have competed as hard as is likely in the present situation.

Undertakings

Section 87B has become a very important part of the *Trade Practices Act*. However it has attracted greatest attention in relation to its use in merger situations even though in fact the Commission is very sparing in its use of undertakings to resolve merger questions.

The Ampol/Caltex merger provides the best known example. The Commission formed the view that the merger was likely to substantially

lessen competition and so advised the parties. They sought reasons for the Commission's decision and then suggested undertakings which would neutralise the anti-competitive effects of concern. The Commission after much consideration and negotiation accepted undertakings and the merger went ahead. The Commission did not see itself as engaging in social engineering, even in this case. The parties had sought to merge and in doing so to engineer an outcome in which the petroleum products market would be much less competitive than in the past. The Commission needed to be satisfied that the undertakings balanced or neutralised the anti-competitive effects. Whether this is called engineering or not is a semantic matter. The fact is that the Act clearly contemplates that undertakings will be used in these situations. The benefit is that mergers can go ahead and realise many of their benefits.

The question of whether undertakings should be negotiated publicly is sometimes raised. The Commission's preference is that undertakings should normally be made known publicly before being accepted so that there is a full opportunity of assessing their likely effects on, the market place, aided by players currently involved in the market place. These is, however, opposition by firms which want to make undertakings confidentially.

There are some circumstances in which the Commission may accede to such requests. These include cases where the ACCC is reasonably well informed about the industry's history and circumstances. An example is the dairy industry where the Commission has considered a range of mergers in recent years. There are two merger proposals which it was highly unlikely would have been able to proceed had the Commission not agreed to undertakings given in private. These were the National Foods case, discussed above, and the eventually aborted Wesfarmers attempt to acquire ICI's Australian assets. The Commission is very hesitant indeed about agreeing to undertakings that are given privately but it does not rule them out totally.

Concluding remarks

In this paper I have discussed a number of international dimensions to competition policy. The ever increasing number of international transactions in the economy points to a need for greater policy efforts at a global level to deal with them. Australia needs to participate in these efforts. One of the key reasons is that there is some danger that international cooperation between such major countries as the United States, the European Union and even Japan will ignore Australian interests. There is some danger that they will look at the effect of cartels or mergers in their own countries and ignore their effects in far away countries like Australia.

Within Australia, globalisation poses important challenges for competition policy. In some respects it eases the task for competition

policy. It also means that changes must be made, for example wider definitions of the market as I believe has been occurring at the Commission.

In many respects however globalisation strengthens the need for a competition law in Australia. If the supply of inputs to our export and import competing industries is done uncompetitively or inefficiently, our capacity to take part in the global economy is harmed.

Photo – David Karonidis

At the time of Australia's federation the issue of trade was hotly debated. Then it was an issue of protectionism versus free trade. A hundred years later the global trading system is still on the agenda. What better fulfills Australia's commitment to trade liberalisation? Bilateral trade commitments or multilateral? Dr Ann Capling, of Melbourne University, raises these issues in her book *Australia and the Global trade System: From Havana to Seattle* (Cambridge University Press, 2001) and on Monday 30 April 2001, she presented some of her views in an address to The Sydney Institute

CLUTCHING FOR APRON STRINGS?

ASSESSING AN AUSTRALIA-UNITED STATES TRADE DEAL

Ann Capling

For the past fifty years or so, Australia's trade policy has been based on a deep-seated commitment to the multilateral trade system and its central norm of non-discrimination. This policy has made a great deal of sense given our size and influence, our dependence on imports and exports, the composition of our trade, and the diversity of our trade partners.

However, since the election of the Howard government in 1996, Australia's trade policy has taken on a distinctively bilateral flavour. Initially it seemed that the bilateralist emphasis in the Coalition's trade policy was little more than an exercise in product differentiation for campaign purposes. In recent months, however, the government has moved from rhetoric to reality and is actively pushing for a number of bilateral trade agreements. The most notable – and controversial – of these is the proposal for a free trade agreement with the United States.

I want to examine the bilateralist turn in Australian trade policy and the forces behind it, and put forward a number of arguments for and against a bilateral trade agreement with the United States. But before doing that, it is important to remind ourselves of the reasons for Australia's longstanding commitment to multilateralism.

Australia and the multilateral trade system

Australia has been a strong and active supporter of the multilateral trading system. This was first given institutional expression in the General Agreement on Tariffs and Trade (GATT) and since 1995, the World Trade Organisation (WTO). When this commitment has been backed by time, money, intellectual capital, and political will, Australia has demonstrated an impressive ability to shape and influence the rules

and norms for international trade—hence the cliché about "punching above our weight".

Australia's activism in these institutions is based on a recognition of the vital importance of the multilateralism, especially for the non-great powers. Despite its flaws, the multilateral trade system provides many important benefits for small countries which lack the political or the economic clout to prise open major export markets on a bilateral or unilateral basis. In Australia, we have relied on the multilateral system and its central norm of non-discrimination as the most effective means of opening markets for our exports.

Apart from its capacity to deliver trade liberalisation, the GATT/WTO has also provided a forum which enables smaller countries to influence the policies of the major powers and secure reform in the rules for international trade. Indeed, multilateralism helps to protect the interests of the less powerful members of the international trade system, because of the way that its norms and rules temper and restrain the behaviour of major powers. To the extent that multilateral rules for trade exist at all, small nations like Australia benefit.

Following the end of the Second World War, Australia's participation was vital to the success of Anglo-American efforts to reconstruct a multilateral trade system after the disastrous experiences of the 1930s. Under the leadership of HC "Nugget" Coombs, Australia played a pivotal role at the international conferences in London, Geneva and Havana which established the multilateral trade system. Working closely with developing countries, Australia ensured that the emerging rules for multilateral trade balanced the American emphasis on trade liberalisation with the employment and development objectives of the other members of the trade system. At these meetings, the preparation, skill and expertise of Australia's negotiators were widely acknowledged. Since then, Australia has wielded far more influence in multilateral trade institutions than its size and position in the global economy has warranted.

Australia's success in multilateral trade negotiations has been determined in large part by the knowledge and experience of our negotiators, their intellectual mastery of the issues, and their ability to hold their own with their counterparts in Washington, Brussels, London, Tokyo and elsewhere. These qualities, so evident in Coombs in the 1940s, John G. Crawford in the 1950s, and Peter Field in the 1980s and early 1990s, have enabled Australia to play an extremely influential role in the multilateral trade system.

Australia's influence has never been greater than it was during the Uruguay Round. Then Australia showed great leadership in putting together the Cairns Group, a coalition of like-minded countries that pushed for a rules-based solution to the problems in agricultural trade.Throughout the round, the Cairns Group fought successfully to

prevent the United States from giving in to the Europeans as it had always done, putting off real agriculture trade reform in exchange for cozy market-sharing deals. Through the efforts of Field and his team, Australia was accorded a central role in both the formal and informal processes of the agriculture negotiations. Following the collapse of the 1988 ministerial meeting that was meant to review the progress of the round, Australia was invited to join secret negotiations with the United States and the European Community. It was in these meetings that the agreement on agriculture was worked out – an agreement that was based on Cairns Group proposals.

Australia also played a leading role in the negotiation of the General Agreement on Trade in Services (GATS). As in the agriculture negotiations, Australia played a prominent role in agenda-setting and information-gathering, and in the development and negotiation of operational proposals and outcomes. Once again, Australia's ability to do this came from the expertise of its negotiators, and their intellectual and conceptual command of difficult technical, legal, economic and political issues. Australia's influence also derived from its leadership of a ginger group of other small and middle-ranking countries. This group worked together to keep momentum in the process, and to prevent the great powers from establishing trade in services agreement tailored only to meet the interests of a handful of American and European corporations.

The new bilateralism

When it first came to power, the Coalition's promotion of "bilateralism" played well among groups who believed that Labor's efforts on institution-building in APEC and the WTO detracted from pressing concerns such as Australia's growing trade deficit with the United States. Certainly the tone of the 1997 White Paper on Foreign and Trade Policy underscored the Howard government's intention to ditch the liberal internationalism associated with Labor's foreign policy initiatives in favour of a more nationalistic approach that produced measurable gains.

That being said, Tim Fischer's "aggressive bilateralism" produced only minor gains. Ironically the limits of Australia's bilateral leverage were clearly evident in the government's attempt to manage two high profile disputes with the United States, concerning Australian subsidies to an Melbourne-based leather manufacturer, and Australian lamb exports to the United States. In both cases, Canberra's attempts to 'settle out of court' on a bilateral basis backfired miserably, only to be resolved through multilateral processes in the WTO.

Notwithstanding the rhetoric of bilateralism, through the 1990s, the Howard government, like its Labor predecessors, remained deeply wary of proposals for bilateral trade deals. There were two major reasons for this.

First, it is generally very difficult for small countries to negotiate improved access to major markets on a bilateral basis. Implicit in the bilateral approach is the ability to achieve successful deals *at the expense of other countries*. In most cases, Australia simply does not have that capacity. Where Australia does have some leverage, governments have been reluctant to use this in pursuit of trade objectives. For instance, in the context of particular trade disputes, the Fraser government dropped hints about the future of American military installations in Australia, uranium exports to the European Community, and access to Australian ports for Japanese tuna boats. But Fraser was never willing to make good on these threats. This was partly because of a general view that trade politics should not be allowed to interfere with other aspects of international relations, and partly because of a fear that these were high risk strategies, likely to lead to retaliation and escalation. This explains why the Howard government was very quick to hose down a suggestion by Trade Minister Mark Vaile that Australia might raise issues of security cooperation with the United States in the context of the lamb dispute.

The other reason for Australia's caution is that its most important trade partners in the East Asian region have traditionally been opposed to bilateral agreements and other discriminatory deals. This certainly limited Australia's options, especially when economic analyses consistently suggested that the most beneficial free trade agreements for Australia would be with Japan and South Korea. Australian governments were also concerned that efforts to seek preferential trade agreements with Europe or the United States could undermine attempts to develop stronger economic ties with the East Asian region, or even invite retaliatory discrimination. In any event, by the late 1980s, the case for preferential trade agreements between Australia and its major trade partners had grown even weaker, with Australia's already limited bargaining power in a preferential context further diminished by our unilateral tariff cuts.

An Australia-United States Trade Agreement?

In 1997 the Clinton Administration made overtures to Canberra about the possibility of a bilateral free trade agreement. At that time, this was firmly rebuffed by the Howard government which recognised that Congress was unlikely to agree to a bilateral deal that opened the United States market for highly competitive Australian exports of high-speed passenger ferries, sugar, dairy products and other agricultural commodities. Yet, only three years later, the Howard government announced its desire to secure a free trade agreement with the United States. This is an historic departure in Australian trade policy that has many potential repercussions.

So what is driving the Howard's tilt towards Washington? To answer that, we must consider developments in the region and in Washington.

As noted, East Asia's trade policy has been firmly committed to multilateralism and non-discrimination, a policy that makes a great deal of sense given the region's trading interests and regional political circumstances. But Japan's tilt towards bilateralism since 1999 has shaken the countries in the region. As a result, our most important trade partners in the region – Japan, Korea, China and Singapore – are all looking closely at a variety of bilateral and sub-regional trade agreements. Unlike the 'open regionalism' that underpins Asia-Pacific Economic Cooperation (APEC), for the most part these deals would discriminate against countries that were not a party to them.

While most commentators trace these developments to the WTO's failure to launch a new round in December 1999, it would appear that the shift of policy stance in the region began prior to the debacle at Seattle. Peter Drysdale believes that the East Asian financial crisis, the political response to Washington's role in that crisis, and the loss of faith in APEC's capacity to deal with the problems of that period, all played a part in stimulating regional interest in closer East Asian economic integration, and a turning away from multilateralism.

It must be said that Australia is not just a hapless "victim" here and that the Howard government must shoulder part of the responsibility for this shift in regional policy. In particular, Australia's treatment of Japan during its prolonged economic crisis has been pretty shabby. During a visit to Japan in July 1999, Howard seemed more interested in playing to producer groups back home than offering help to Japan. Publicly castigating the Obuchi government for its slow approach to trade liberalisation, he called on Japan to give Australia better market access for agricultural products. John Ravenhill has observed that the Prime Minister's "hectoring style on the virtues of trade liberalization and on the comparatively impressive performance of the Australian economy in a period of crisis in Asia won few friends in the Japanese government."

Developments in American trade policy have also influenced a shift in Canberra's thinking about bilateral agreements. While the multilateral system has been collectively created and maintained, it has very much depended on strong American leadership, especially to give impetus to multilateral trade negotiations. But Washington's enthusiam for multilateralism has been waning since the 1980s. With mounting domestic opposition to global trade reform (as manifested at Seattle), and the decline of political support for multilateral trade negotiations, the United States is now actively pursuing other options, including the Free Trade Area of the Americas (FTAA) proposal which would

extend NAFTA to 34 countries in North and South America—a sort of Monroe Doctrine for the 21st century.

Together these developments help to explain why Canberra is now keen on a bilateral trade agreement with the United States. This raises the question: what could Australia expect to gain from such an agreement? It is difficult to make any informed comments about the economic aspects of any deal, since the government has only recently commissioned a full econometric study of the effects of a deal with United States.

However, we already know from our past record of bilateral dealings with the United States that Australia is unlikely to get much by way of improved access for our agricultural products. The only time we have secured significant improvements in access to the United States market have come in the context of multilateral negotiations. Are we likely to do any better now? As Stuart Harris recently quipped, "Do we really think a President from a beef producing state, whose brother is governor of a sugar producing state, and who depended on farming states for his election is likely to change fifty years of US willingness to give heavy protection to its farmers?"

One of the most vocal proponents of a bilateral deal with the United States, Alan Oxley, dismisses these concerns. Oxley notes that manufactured goods now account for the largest share of our exports, and that the United States is one of our fastest growing markets. For these reasons, he argues that an Australia-US agreement that excluded agriculture would still be in Australia's national interest.

To the extent that Oxley's analysis draws public attention to the importance of manufactured goods in our export mix, it is to be welcomed. By contrast, the Coalition continues to peddle a trade policy frozen in time, with Tim Fischer and Mark Vaile out there trying to crack open markets for Australia's rural exports. This was especially evident at the time of Fischer's resignation. Then Howard squandered an opportunity to broaden the Coalition's trade policy vision by putting a Liberal minister into the portfolio, insisting instead that Trade remain with the National Party. Moreover, the government has stated repeatedly that an Australia-United States deal that excluded agriculture would not be acceptable.

Nonetheless, Oxley and other analysts have either downplayed or overlooked many of the problems that would be inherent in any deal with the United States.

One major consideration is that a bilateral trade deal with the United States would require Australia to discriminate in favour of American suppliers in areas such as textiles, motor vehicles, services and so on. This kind of deal had obvious attractions for Canada given its overwhelming trade dependence on the United States: when the Canada-US Free Trade Agreement was negotiated, trade with the United States accounted for 75 per cent of Canada's exports and two-

thirds of its imports. But Australia is in a very different position to Canada. While Australia's trade relationship with the United States is very important, its trade is much more multilateralised. That being the case, why would Australia want to offer preferential access to the United States while discriminating against imports from the rest of the world, from whom we source 80 per cent of our imports? Moreover, why would we want to discriminate against our important export markets, notably China, Japan and Korea?

Rules concerning investment would also be highly contentious. The United States would most certainly expect NAFTA-type investment provisions to be included in a bilateral deal. NAFTA Chapter 11 grants a number of rights to foreign investors including "the right to establishment" and national treatment obligations that are far more stringent than those found in WTO agreements. There are also provisions that allow foreign investors to take complaints about a breach of obligations by a NAFTA party to an arbitration body. This is a significant departure from WTO practice where only states are capable of bringing international legal proceedings. Moreover, unlike the WTO dispute settlement mechanism, there is no appeals process.

These provisions have caused a great deal of anxiety for the Canadian government. For instance, United Parcel Service is suing Canada over anti-competitive behaviour by the government postal service. Recent cases brought against Canada under NAFTA's investment rules have successfully reversed a Canadian ban on MMT, a gasoline additive with a high magnesium content considered to be a public health risk, and a Canadian ban on the export of hazardous waste containing polychlorinated biphenyls (PCBs). Environmental groups are understandably up in arms and Ottawa is under considerable pressure to re-open the NAFTA agreement. In these circumstances, the Australian public is very unlikely to support an Australia-US Trade Agreement that includes NAFTA style investment provisions, especially once Australians realise that these provisions formed the basis of Multilateral Agreement on Investment (MAI).

A third potential problem with an Australia-US trade agreement is Australia's lack of negotiating coin. As one of the most open economies in the world, Australia has relatively little left to offer by way of bilateral market access in goods or services.

The few market restrictions that still exist are in sensitive areas such as cultural protection. Moreover, there is likely to be deep antipathy to any deal that patently traded off the interests of one industry sector against another. Indeed one of the most attractive features of multilateral trade negotiations for governments is the way in which they camouflage the fact that these trade-offs do happen. In bilateral negotiations, however, it is virtually impossible to disguise this.

Conclusion

To conclude, Greg Sheridan has recently urged Howard to "Go all the way with Bush's mighty USA". Yet the reality is that Australia is unlikely to get past first base. There are a number of reasons for this.

First, the launch of a new WTO round and the negotiation of the Free Trade Area of the Americas are the major trade policy priorities for the Bush Administration, not a trade deal with Australia.

Second, it is not at all clear that the current Congress is willing to grant trade promotion authority to the President. Without trade promotion authority, Congress is free to pick the eyes out of any trade agreement negotiated by the Administration, including a bilateral deal with Australia. Congress is more likely to grant this authority after a new WTO round has been launched, at which point the "desperate and dateless" feeling that seems to be driving Australian trade policy right now may be less of a consideration.

Third, as Australia's ambassador to Washington, Michael Thawley, recently pointed out, "Australia has no natural political constituency" or political leverage in the United States. In trade terms, we do not rank among the most important trade partners of the United States: Australia ranks fifteenth among its export markets, and twenty-ninth as a source of imports. However, the investment relationships are much more important – which is all the more reason why we would expect to see strong investors' rights provisions in any deal.

Finally, it is not at all clear that this proposal enjoys much support in Australia. There is likely to be opposition from a number of key industry sectors including the motor vehicle manufacturers. Any agreement that includes MAI-type investment provisions is bound to provoke intense public hostility. And there is a growing concern that Canberra's overriding objective in a trade deal is to deepen its strategic ties with the United States. While there are precedents for such a deal – notably Israel's bilateral trade agreement with the United States – many Australians would question the need for this and whether it is in Australia's regional interests.

When it comes to international economic relations, Australia cannot rely on "great and powerful friends". Presaging the decline of Britain as a global trade power, John Crawford wrote in the 1930s of the need for Australia to engage fully in its own region. In the 1950s, Crawford and Trade Minister John McEwen charted a bold new course for Australian trade policy which broke away from Australia's dependence on Britain and reoriented our economic relations with the Asia-Pacific region, within the broader framework of multilateralism. This policy served us well. Rather than desperately clutching for apron strings, we should be putting our efforts towards supporting multilateralism in the region.

Endnotes

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3 See Oxley's report, *New Directions in Australia's Trade: Trends and Strategies* to 2010, March 2001.

4 Greg Sheridan, "Let's go all the way with Bush's mighty USA", *The Australian*, 20 April 2001.

5 Thawley speech reported by Paul Kelly, "Change in US sharpens our dilemma", *The Australian*, 20 December

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(Member for Hughes),
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People and Nations – Their Need to Love and Hate

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Australia, Science Policy and the Commercialisation of Ideas

Susan Varga & Anne Coombs (Authors, *Broometime*, Hodder Headline, 2001)
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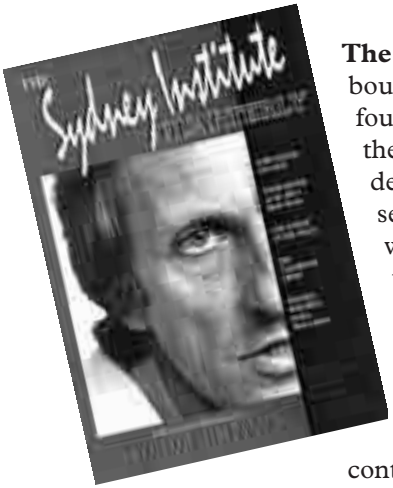

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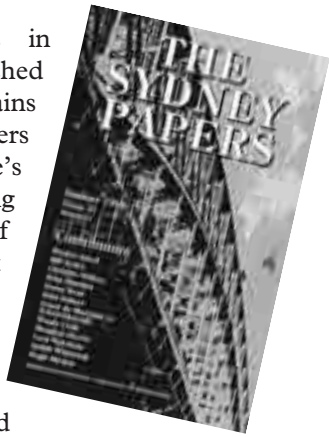

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