



A National Sustainability Policy

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To:

Premier of Victoria

Climate Change Submission

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The Victorian Government is to be commended for its recent Climate Change Summit, the associated *A CLIMATE OF OPPORTUNITY Summit Paper*, and the decision to invite and consider all submissions in response to the Summit Paper, as part of the development of an initial Green Paper. This submission responds to that invitation and addresses major governance challenges associated with the implementation of government policies addressing climate change.

The challenge of ensuring the sustainability of the climate and natural environment that supports us is the most important facing our current generation. It will shape every aspect of our lives from food security to international trade to medicine. There is no single policy which can respond to every aspect of this challenge. Further, almost every aspect of policy choice will be affected by the imperative of achieving sustainability of our environment, society and economy.

Australia has a world class model on which to draw in order to develop a whole-of-government approach to the implementation of climate change and sustainability policy, encompassing government expenditure, taxation, regulation and investment.

The National Competition Policy (NCP) process brought us reforming headline policies such as energy markets, and countless other improvements across our economy. By integrating the actions of governments at every level – national, state, territory and local – and re-writing the rules to force business into genuine competition, NCP helped us avoid the threatened “banana republic status” of which then Treasurer Keating had warned.

The NCP process was as important as the particular reforms. It brought government, business and other interests together in a way no single policy reform could have. It was launched by the Hilmer Report, commissioned by the Prime Minister, Premiers and Chief Ministers. Hilmer recommended principles for introducing the benefits of competition whilst protecting the public interest and guarding against adverse impacts. Those principles were applied through a re-distribution of regulatory powers and a comprehensive review of all legislation which could affect trade.

Governments joined to make competition policies, parliaments legislated to give them effect and the Australian Competition and Consumer Commission (ACCC) was established to monitor and enforce associated competition laws.

In so doing, NCP has transformed the economy into a dynamic and innovative engine in which economic growth delivers social benefits. The closer, more cooperative working relationships which emerged still help the nation address all manner of issues.

A **National Sustainability Policy** process has the potential to transform our society into one which is environmentally sustainable and socially equitable. It could help us to act out of recognition that our economy and society are founded on the largesse of our natural environment – a favourable climate, clean air and water, biodiversity and fertile soil - and that we can only survive within the limits of that environment.

International models

California established the California Air Resources Board (CARB) in 1996. The role of CARB is to develop regulations and market mechanisms to reduce California's greenhouse gas emissions to specified targets. It is empowered to:

- Establish a California-wide greenhouse gas emissions cap for 2020, based on 1990 emissions by January 1, 2008.
- Adopt mandatory reporting rules for significant sources of greenhouse gases by January 1, 2009.
- Adopt a plan by January 1, 2009 indicating how emission reductions will be achieved from significant greenhouse gas sources via regulations, market mechanisms and other actions.
- Adopt regulations by January 1, 2011 to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas, including provisions for using both market mechanisms and alternative compliance mechanisms.
- Convene an Environmental Justice Advisory Committee and an Economic and Technology Advancement Advisory Committee to advise CARB.
- Ensure public notice and opportunity for comment for all CARB actions.
- Prior to imposing any mandates or authorizing market mechanisms, CARB must evaluate several factors, including but not limited to impacts on California's economy, the environment and public health; equity between regulated entities; electricity reliability, conformance with other environmental laws and ensure that the rules do not disproportionately impact low-income communities (Schwarzenegger 2006).

This Californian model arose a decade later than the Hilmer Report and emerged in a completely differently policy environment. Its features should be considered in developing an Australian National Sustainability Policy.

There are also many lessons to be learned from European Union experience (European Communities 2007). These lessons include retaining a focus on social values and improving whilst also simplifying legislation (European Union 2007). Within the EU framework Germany, for example, has set a medium-term target of a 40 per cent reduction in carbon emissions from 1990 levels by 2020, subject to other member states achieving a 30 per cent reduction (Bundesministerium für Umwelt 2005).

The Sustainability Policy: Process and Structure

We suggest a process and a structure that mirrors the NCP, by creating the following:

- 1) A public inquiry to build on and extend the forthcoming Garnaut Report and policy processes within state and federal departments into the governance arrangements needed to effectively implement carbon trading and the myriad other changes we need to make in the way we live. Like the Hilmer Report, it should recommend principles for the review of the rules that we live by – the acts and regulations that affect our use, misuse and waste of energy and water.
- 2) A national Sustainability Principles Agreement negotiated through the Council of Australian Governments (CoAG) to establish policies which
 - set out obligations and liabilities in the areas of energy intensity, carbon neutrality, environmental impacts assessment, urban and regional planning, and circumstances for draw-down of environmental capital
 - apply the reforms to local government;
 - set out a (non-exhaustive) list of common interest factors to consider when assessing the costs and benefits of a particular policy or course of action.
- 3) A Sustainability Conduct Code Agreement by which State and Territory governments:
 - commit to extending the prohibitions against unsustainable behaviour to every business operating or based in Australia; and
 - undertake to notify the Australian Sustainability Commission when each jurisdiction enacts primary or sub-ordinate legislation in respect of which it requests an exemption from prohibitions against unsustainable decisions.
- 4) An Agreement to Implement National Sustainability Policy and Related Reforms (Implementation Agreement) which:
 - sets out the reform obligations accepted by all national, state, territory and local governments and which they undertake to apply to their instrumentalities including all entities incorporated under Australian law or otherwise subject to any domestic legal authority; and
 - provides for payments by the Commonwealth to the States, Territories and local governments where they achieve satisfactory progress with the implementation of the National Sustainability Policy and related reforms.
- 5) The introduction of an Environmental Practices Act, the provisions of which would require all entities (i.e. including national, state, territory and local governments and their instrumentalities and all entities incorporated under Australian law or otherwise subject to any domestic legal authority) to act in accordance with the Sustainability Principles Agreement, in a similar manner to the regulation of trade practices by the Trade Practices Act 1974 e.g.

The object of this Act is to enhance the welfare of Australians and the fulfilment of Australia's international obligations through the promotion of environmental sustainability.
- 6) A National Sustainability Council be established by all Australian national, state, territory and local governments to act as a policy advisory body to
 - monitor and report to CoAG on the implementation of National Sustainability Policy;
 - review the progress of developing a set of national environmental accounts, including carbon and water accounts;

- advise on the design of environmentally sustainable policies, including the reform of existing legislation and regulation;
- use the national accounts to audit against climate change and sustainability objectives.

Like the National Competition Council, the Sustainability Council will be funded by the Commonwealth Government, but accountable to all Australian States and Territories through the CoAG. As a statutory body, the Council will be independent of the executive (political) arm of governments.

The Challenge

The nature and extent of the changes required are extra-ordinary and exceed those required at the outbreak of World War 2, when Australia and other Allied nations undertook urgent, assive and rapid restructuring of governance, infrastructure and production systems. The changes must occur in almost every aspect of life. Government must establish a framework within which individuals, households, businesses and communities are given a clear sense of leadership and direction, and the capacity to respond with high levels of autonomy. An effective governance system require a high level of education and support, especially during their establishment, and strong co-ordination of implementation. Existing environmental protection agencies (EPAs) would be too fragmented to harmonise action nationally, but they have the potential to perform an important role in establishment of the system and the enforcement of the national Environmental Practices Act within their jurisdictions. These ssues suggest an urgent need for the public inquiry into governance arrangements to consider the merits of various approaches.

The process we propose is similar to the way in which governance policy reform to achieve an efficient competitive national economy overcame the incapacity of any one level of government to implement comprehensive re-structuring of markets, arising from the limiting effects of the distribution of constitutional powers. The National Competition Policy process showed how governments can work together to overcome major structural problems.

The governance challenges in addressing sustainability are no less daunting than was a competitive economy. We believe that the process itself is an essential element of successfully addressing sustainability and will facilitate the emergence of better policy. The process we propose – a **National Sustainability Process** - offers a way of Australian national, state, territory and local governments meeting the challenge of developing and applying shared environmental policy objectives.

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