Corporate Welfare
Public Accountability for Industry Assistance

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Executive Summary

By any definition there is a complete lack of public accountability for State Government industry assistance in Australia. The disbursement of industry assistance is instead treated as a private commercial matter between governments and the business recipients of subsidies, loans, tax breaks and other 'incentives'. At a time when 'mutual obligation' is being imposed on the recipients of social welfare, businesses that receive public assistance are not required to disclose sufficient information to satisfy probity and public accountability requirements.

In 1996, a comprehensive Industry Commission report estimated that Federal, State and Territory Governments provided more than $16 billion each year in financial and other assistance to industry, including subsidies, revenue forgone and market protection. This figure represents over 3% of Australia's GDP. Of the $16 billion, almost $6 billion was comprised of State and Territory Government subsidies and revenue forgone. In particular cases of assistance, subsidies can amount to as much as $40,000 per new job created.

The present study found that estimating expenditure on industry assistance is an extremely difficult exercise, not least because there is limited publicly available economic and financial information about government assistance to industry in Australia. With the dearth of information on the extent of this assistance it is not surprising that there has been limited external assessment of the various incentive programs to date. It is alarming, however, that there has also been wholly inadequate internal government assessment of the economic and social contributions of the various incentive programs.

This study:

- examines the different forms of industry assistance provided by government in Australia;
- assesses the extent to which information is publicly available in relation to this assistance;
- outlines the criteria upon which assistance is made available;
- evaluates the monitoring procedures adopted by governments where assistance is provided.

The study focuses on the use by State Governments of financial and other incentives to attract new industry and investment.

Investment attraction

The study compares investment attraction with a private auction of real estate, where businesses are the vendors, and State Governments adopt a 'beggar thy neighbour' attitude, making secret bids of taxpayer funds. State Governments perceive this process as a 'battle' for new investment, where there are victors and there are the

vanquished. This suggests a combative, as opposed to a cooperative or even a competitive, environment.

This 'battle' occurs in an accountability vacuum. While the Federal Government encourages fair competition among businesses in order to benefit consumers, it seems that similar rules and protocols are not applied to combat between States. This is to the detriment of consumers and taxpayers. Competition between States is in many instances inappropriate given that it is Australian taxpayers' money that is involved. After all, in such an environment it is the business vendor who is often the 'winner' at the expense of the Australian public. Cooperation is a more effective organising principle for the expenditure of public funds.

Monitoring and evaluation

Public assistance to industry is a legitimate way for governments to participate in economic activity. This assistance should be used transparently as a means of generating environmentally sustainable economic growth as well as creating a net increase in high-quality jobs. Government spending of public money should focus on broad notions of the public good rather than the profit margins of private corporations.

The lack of public access to government information, however, means that it is extremely difficult to determine the extent to which State Governments subject industry assistance to performance criteria by which the public interest can be assessed. Even more difficult is the task of assessing the internal monitoring procedures, if any, adopted by governments, a problem previously highlighted by the Industry Commission, and by the Auditors-General of Victoria and NSW.

Ensuring public accountability

Effective external evaluation requires public disclosure of all aspects of assistance. The Constitutions in many American States include a 'right to know' which guarantees public access to government documents. This is in distinct contrast to the situation in Australia, where even Freedom of Information legislation can often be more accurately characterised as 'Restriction of Information'.

Industry assistance should be structured by public law notions of natural justice and procedural fairness. Transparency and accountability would be enhanced if State Governments were to reevaluate the legal and institutional framework governing accountability for industry assistance. Industry incentive programs could be enshrined in legislation encapsulating policy goals, performance standards and monitoring mechanisms.

For its part, the Commonwealth could formulate an agreed set of protocols to be observed by competing States. If all States were required to disclose information then no State could be disadvantaged by doing so. Similarly, companies would know that information would be released and would be forced to accept at the outset that if they were to receive public funds then there would have to be public accountability.

In this scenario, there might be a role for the Australian Competition and Consumer Commission or a similar type of organisation to act as a regulatory body to rule on alleged departure from agreed protocols. However, full public disclosure, including material provided by businesses seeking industry assistance, may be an alternative to a regulatory system. In circumstances of full disclosure both the public and the various parliaments would be in a position to determine whether or not expenditure and incentives are justified.

In the current environment, it is clear that nobody wants to rock the industry assistance boat. Industry is content with a process that allows it to ratchet up offers of assistance from competing States. States, particularly those of the rust belt variety or those States with Governments facing impending elections, appear satisfied with a system that allows them to bid up taxpayers funds with impunity, confident that such largesse will remain concealed by a veil of commercial in confidence. In this context, it is not surprising that the Industry Commission recommendations aimed at improving the system have fallen on deaf ears.

1. Introduction

All levels of government in Australia offer various incentives, including public subsidies and tax breaks, to attract new private industry to particular States or regions. Success in attracting new industry is seen as a publicity coup, as it is maintained that new investment will generate economic growth that in turn will create employment and improve standards of living. A recent example of this sort of publicity is Queensland Premier Peter Beattie's delight earlier this year in announcing his Government's success in attracting Virgin Airlines to Brisbane in return for a public subsidy package.

The subsidies and incentives offered to the private sector amount to a large contribution from the public purse. In 1996, the Industry Commission (now the Productivity Commission) estimated that total Federal, State and Local Government assistance to industry in Australia amounted to over $16 billion, including Commonwealth border and market protection measures. State and Territory assistance amounted to almost $6 billion in spending and revenue foregone through tax exemptions or discounts and other incentives. There is little evidence to suggest that the amount of assistance has decreased since the Commission produced its report (Burrell and Verrender 1999).

This public assistance to industry is not necessarily a bad thing. It represents a legitimate way for governments to participate in economic activity. The question is, what sort of return is the public getting on its investment? Ideally, public assistance should be used transparently as a means of generating environmentally sustainable economic growth as well as creating a net increase in high quality jobs. Government spending of what is, after all, public money should focus on broad notions of the public good rather than merely benefit the profit margins of private corporations. Unfortunately, in most instances the details of assistance arrangements are hidden from public scrutiny, making independent assessment of the public benefit generated by this assistance, if any, difficult.

Many of these concerns about the transparency of industry assistance were raised by the Industry Commission in 1996 in a comprehensive report into State, Territory and Local Government assistance to industry. The Commission's report found that, among other things, State Government assistance was selective, discretionary and secretive. It recommended that at the very least, State Governments should increase the transparency and accountability of their assistance programs.

The secrecy noted by the Industry Commission makes estimating expenditure on industry assistance an extremely difficult exercise. With the dearth of information on the extent of this assistance it is not surprising that there has been limited external assessment of the various incentive programs to date. It is alarming, however, that according to various commentators, there has also been a less than rigorous internal assessment by government of the various incentive programs.

Importantly, public accountability is not solely served by assessment of government decisions and processes. With the various State Governments in Australia willing to compete aggressively against each other for new investment, international and domestic companies often appear to be actively playing off one State against another in order to increase the incentives on offer. Given the inadequacy of current accountability mechanisms, it is possible that companies may be benefiting from the veil of 'commercial in confidence' and the competition between States, and achieving additional financial concessions or benefits for their businesses at the expense of the public at large.

This paper will first explore the nature of industry attraction incentives and the extent of their use by the Commonwealth and State Governments. Following on from this, we will examine the legal framework that governs the administration of industry assistance provided to new investors. Based on our assessment of the inadequacies of the existing legal framework, we will propose some areas where the legal framework can be enhanced in the interests of transparency and public accountability.

2. Background to the Research

Since Federation, the Commonwealth Government has provided various forms of assistance to private industry. For a long time, the major form of assistance was protection of domestic industry through policies such as the imposition of tariffs on imports. In addition to direct assistance such as tariffs and subsidies, over time the Australian public purse has assisted industry in many other ways, not the least through funding transport and other infrastructure necessary for its successful operation.

After the election of the Hawke Labor Government in the early 1980s the Commonwealth moved away from protectionist economic policies. Instead, the Government sought to enhance Australia's economic efficiency by encouraging competition in the market place. Protection of local industry was reduced, thereby opening up Australian business to international competition. The Government also proceeded to unpick the regulatory framework governing economic activity, and implemented microeconomic reforms designed to increase flexibility, reduce costs and improve the quality of government services (Industry Commission 1996, p. 2).

Partly as a consequence of this reduction in Commonwealth protectionism, assistance provided by State and Local Governments has grown in volume. Efforts by State Governments to attract new investment to their regions in this competitive environment have been especially prevalent. The growing significance of this issue was confirmed by the Industry Commission's report *State, Territory and Local Government Assistance to Industry*. Commissioned by the Keating Government in late 1995, the report was submitted to the Howard Government in October 1996. Inexplicably, the Treasurer Peter Costello did not table the Commission's Report until February 1998, a delay of almost 14 months.

The Industry Commission's report found that State Government assistance to industry was generally conducted on an *ad hoc*, selective basis, behind a veil of secrecy. The

Commission also found that gains in employment and income claimed by States as a result of competitive bidding for major events and new investment were often supported by questionable methodology. Although many of the findings of the Commission were underpinned by a heavy scepticism regarding government intervention in the market place, it accepted that assistance was likely to continue. On this basis, the Commission made numerous recommendations, including a proposal that State Governments agree to increase the transparency and accountability of their assistance programs, as well as agree to limit firm and project-specific assistance to industry. The Commission also recommended that the Commonwealth play a role in encouraging States to limit their selective assistance.

In addition to the Industry Commission's report, several studies into government assistance to industry have been conducted at State level, such as the Victorian Auditor-General's 1995 Special Report *Promoting Industry Development: Assistance by Government*, and the NSW Auditor-General's 1998 study *Provision of Industry Assistance*. Both reports recommended that the respective States enhance performance standards, evaluation and accountability in relation to assistance to industry. These recommendations were substantially ignored. In Western Australia, the WA Parliament's Public Accounts and Expenditure Review Committee tabled a comprehensive review of assistance in that State, Report No. 31, *Western Australian Government Assistance to Industry*, published in 1996, as well as Report No. 39, *Follow-Up Report on Western Australian Government Assistance Report 1996*, tabled in 1998. These reports also addressed concerns regarding Government mechanisms for the assessment, evaluation and accountability of industry assistance in that State.

It is significant that in the main, the recommendations made by these reports have been ignored, or at least, State Governments have not been able or inclined to work together to implement reform. This can be contrasted with the enthusiasm that has greeted social welfare reform proposals advocating the extension of concepts such as 'mutual obligation' and accountability to welfare recipients (Dodson 2000). It seems that government enthusiasm for reform and increased accountability is unlikely to be extended to industry assistance, often called 'corporate welfare' by its critics (Bartlett and Steele 1998).

Some reports have suggested that the Commonwealth should once again play a stronger role in assistance to industry. These include the Review of Business Programs conducted by David Mortimer for the Federal Government in 1997, entitled *Going for Growth - Business Programs for Investment, Innovation and Export* and *The Global Information Economy: The Way Ahead* by the Information Industries Taskforce chaired by Professor Ashley Goldsworthy. Both reports recommended, among other things, that the Federal Government use investment attraction subsidies to attract footloose or nomadic investment. These reports were followed by the Government's policy statement *Investing for Growth*, in which it promised to consider provision of investment incentives on a case by case basis, and which committed almost $45 million over four years to establish an investment agency, Invest Australia, 'to promote Australia's advantages as a location for investment' (Department of Industry 1997). The Review of Business Taxation's 1999 Report (known as the 'Ralph Report') recommended reforms to Australia's business taxation system, including reduction of the Capital Gains Tax, to improve Australia's capacity to

attract and encourage new domestic and foreign investment (Review of Business Taxation 1999).

These reports have been produced in the context of international discussion regarding government assistance to industry, and the debate regarding the role of government subsidies in the context of the push for 'free trade'. Much of this debate has occurred in countries with federal governmental structures such as the United States and Canada, where the benefits to the general public of competition among State and Provincial Governments to attract new industry have been questioned. In 1996, a forum held in Washington DC by the Federal Reserve Bank of Minneapolis under the title *The Economic War Among the States* sought to address the negative consequences of competition among States for new investment. A study of US State Government assistance and accountability measures conducted by the Grassroots Policy Project, the Sugar Law Center for Economic and Social Justice and Sustainable America in *Public Subsidies, Public Accountability*, published in 1998, questioned the accountability and transparency of State and Local Government assistance in that country. The study was able to identify several State and City administrations that had been persuaded to address these issues through legislation.

There has also been extensive discussion and analysis of these issues in Canada, which adopted the Canadian Internal Trade Agreement in 1994 to address internal competition for industry assistance. Also relevant is the European Community's balancing of free trade between member states with the achievement of social goals such as the reduction in unemployment through job creation and training (Barnard 1999).

Given this national and international analysis, what is the current status of government assistance to industry in Australia? As we will see from the following, little has changed since the Industry Commission's report.

3. Survey of Investment Incentives

In addition to the traditional exercise of direct control over their own activities and resources in order to achieve policy targets, State Governments increasingly seek to achieve policy objectives by influencing the direction of private investment and resource allocation. In other words, the government uses its available resources – such as its authority and wealth - to achieve policy objectives through sectors of the economy that are beyond its immediate control. These resources can be directed towards independent economic actors through various policy instruments, such as by persuasion facilitated by provision of information (or implied threat of sanction), taxation (or exemption from taxation), direct regulation, and provision of subsidies or incentives. These examples of what might be termed 'indirect action' are often designed to achieve their goals by making undesired behaviour *more* expensive, or by ensuring that desired behaviour is *less* expensive (Daintith 1994).

All State and Territory Governments in Australia use indirect policy instruments in the form of assistance to the private business sector. This is often called 'industry

assistance', where industry is defined broadly to include any economic activity of organisations and individuals. According to the Industry Commission, 'assistance' encompasses more than financial assistance in the form of subsidies or tax breaks. It can include any act by government that directly or indirectly assists someone in carrying on a business or otherwise contributes in some way a pecuniary benefit for a person (Industry Commission 1996, p. 3). This definition takes into account many of the basic functions of government in maintaining and enforcing a legal system, providing community services and so on. This paper, however, will be more concerned with direct forms of both financial and non-financial assistance.

While this paper will consider assistance offered by all States and Territories, and to a lesser extent the Commonwealth, it will focus in particular on Victoria, NSW and South Australia.

3.1 Industry Assistance Programs and Policies

Most public assistance to industry in Australia can be categorised under one of the following broad headings:

- Attraction of new industry and investment
- Subsidies to 'major projects'
- Business and industry development
  - including funding for Research & Development
- Regional development
  - including industry attraction
- Trade and investment
  - including export enhancement or expansion, and programs designed to enhance business competitiveness

Most, if not all, State Governments designate a Ministerial portfolio and supporting department that is ultimately responsible for industry assistance - although other departments may be involved in discrete programs such as tourism, attraction of major events, or assistance targeted to particular industries, such as agriculture.
The State Government of NSW, for example, offers a wide range of assistance to industry. The NSW Department of State and Regional Development's activities are classified as one program, 'Development of the NSW Economy'. This program includes several key services and sub-programs including Assistance to Industry, Regional Development Assistance, Regional Headquarters Tax Rebates, Small Business Development and so on. The Department's assistance is generally delivered in three major areas: New Investment, that is, attracting new investment to metropolitan and regional NSW; Regional Development, which involves assisting regional communities to be more attractive to investors; and Small Business Development, or provision of services to new and growing businesses (Auditor-General of NSW 1998, pp. 16-17).

In this discussion paper, we are predominantly concerned with what is often called 'investment attraction', that is, offers of public assistance in one form or another used to attract new investment and industry to a State or region. The paper will not consider State Government investment in a business or enterprise already operating within the

State such as assistance that is designed to enhance the export potential of existing industry. State Government efforts to attract new investment are usually ad-hoc, one-off agreements with individual applicants. These include incentives used to attract major projects such as sporting events, or incentives offered to new industry under what are in some States known as 'Investment Attraction Programs'. Both of these types of incentive program target potential investors from overseas as well as companies operating in Australian States that might be persuaded to invest in or relocate industry to another State.

An example of the role that State Governments see themselves playing in this process is provided by the South Australian Department of Trade and Industry, which maintains that:

> One of the primary drivers of economic development is new, private investment. The Department has a role to play in encouraging productive investment in the State. The Department secures new private investment and reinvestment through promoting South Australian capabilities locally, interstate and overseas, and competing for complementary new investment (Department of Industry and Trade, SA 1999, p. 10).

The Industry Commission found that most if not all State Governments in Australia maintained industry assistance programs targeted at attracting new investment.

Government assistance to attract new industry is premised on the assumption that private investment generates economic growth and employment, and that economic growth is beneficial to the population within a particular government's jurisdiction. Governments generally argue that the major benefit of economic growth is an increase in the number of jobs available in the economy, which leads to a reduction in unemployment. The Victorian Department of State Development's 1998-99 Annual Report notes that the aim of its financial assistance packages was to 'attract new export focused investment, boost business activity, and encourage employment creation' (Department of State Development, Victoria 1999, p. 103).

The NSW Government informed the Industry Commission that its selective assistance was premised on considerations such as: the increased mobility of private investment under globalisation; the economic benefits arising from investment projects that might not otherwise proceed; the 'prisoners's dilemma'[1] which arises when other governments are providing unknown levels of assistance; and the belief that large, high-profile projects can act as a 'beacon' or 'lighthouse' advertising the benefits of the State. Another reason for selective assistance identified by the NSW Government was the budgetary pressures placed on States, which led Governments to use such assistance as a means of containing the cost of economic development policies. Justifications such as these are often underpinned by a firm belief, which some see

[1] The term 'prisoners' dilemma' describes the situation where two people are caught for a crime that they committed together, but are interrogated separately. It is said that because of the incentive that a confession will lead to a lesser sentence, the optimal strategy of each prisoner is to confess, no matter what the other chooses to do. Therefore, both confess and serve some time for a more serious offence, even though both may have been better off if neither confessed. For a more detailed description of the classical prisoners' dilemma, see Industry Commission 1996, p. 39.

founded in ideology, that private enterprise is more efficient and effective at delivering economic development than the public sector in any case.

Some commentators have argued that it is often difficult to assess 'economic growth' as commonly measured against the level of unemployment because of the distorting effects of high population growth. The Mortimer Report argued that if the Government's goal was to reduce unemployment through wealth creation, then what was needed was a measurement of growth per head of population (Review of Business Programs 1997, p. 7). Other commentators have questioned the assumption that economic growth, as currently measured, automatically leads to an improvement in the quality of life of the general population, and have proposed alternative measures of growth (Hamilton 1998).

Most States profess to have socially oriented goals as well as economic development in mind when it comes to the attraction of new industry. A stated objective of the NSW Department of State and Regional Development in its 'Policy Approach to Industry Development' is:

> to provide a high and improving standard of living for the people of the State. This is achieved through four key drivers – social justice, economic development and job generation, environmental protection and financial strength (Auditor-General of NSW 1998, p. 22).

This statement, however, evades the reality that promoting economic growth often seems to be the most prominent goal that government seeks to achieve through industry assistance.

Rationale for industry assistance aside, what is the particular nature of assistance offered to industry by State Governments in Australia?

3.2 Form of Assistance

Public financial assistance to industry ranges from direct assistance in the form of cash subsidies and tax discounts, through to loans and provision of discounted government services. Governments also provide non-financial assistance, which is often generically described as 'facilitation'. Examples of facilitation include provision of information and assistance regarding existing regulation and bureaucratic procedures, and assistance with circumventing standard regulations – for instance, by varying planning controls to enable a development to proceed. The following is a classification of some of the different forms of public assistance offered to private industry in Australia:

- Direct financial assistance:
  - (cash) subsidies and bounties
  - grants
  - loans
  - tax concessions
  - government purchasing preferences

- 'In-kind' assistance:
  - provision or discounting of land and infrastructure requirements (for example, discounted electricity prices where privatisation has not removed this option)
  - planning advice and information
  - facilitation (fast tracking of approvals processes/access to government)

- Direct protection of existing industries from imports (tariffs and quotas)

This classification does not take into account hidden subsidies such as the social and economic cost to the public of pollution that may arise because of a relaxation in compliance with environmental considerations.

It is difficult to document the exact nature of assistance offered by particular States as such information is usually classified as either commercially confidential, or as information the disclosure of which would adversely affect a State's ability to compete with other Governments for new investment. It is apparent, however, that States generally provide selective, project specific assistance rather than establishing a particular subsidy and inviting applications from businesses that potentially qualify for the subsidy. In other words, State Governments select the type and form of industry attraction assistance on the basis of 'negotiations' with prospective investors, tailoring assistance to the particular circumstances of each case. The Industry Commission's report identified only a few exceptions to this practice, such as the Queensland Government's decision to halve stamp duty on all share transactions in 1995. This forced other States to follow suit in order to protect the level of activity in their jurisdictions (Industry Commission 1996, p. 22).

The practice of offering selective, project specific assistance can be contrasted with examples from the United States, where State Governments often legislate to establish a particular tax incentive or subsidy targeted to new investment. This practice often enables Governments to set clear, publicly available eligibility criteria for the subsidy. For instance, in 1996 the US State of Maryland passed a *Job Creation Tax Credit Act* which established an exemption from certain state taxes that could be made available to companies that established or expanded business facilities within the state and met specified eligibility requirements (Howe and Vallianatos 1998, p. 51).

According to the NSW Auditor-General, assistance is provided to prospective businesses by the NSW Department of State and Regional Development in two ways – through facilitation and by financial assistance. The actual make-up of the assistance packages varies with the 'nature of the investment and the particular requirements of the investor'. The Department also determines the maximum level of assistance it is prepared to provide to secure new investment. Typical incentive packages provided by NSW to a project proponent may include one or more of payroll and land tax rebates, stamp duty exemptions or concessions, workforce training, provision of infrastructure, and provision of specialist information on government processes (Auditor-General of NSW 1998, p. 34).

South Australia also offers firm-specific assistance, including grants to offset relocation costs, subsidies for training, housing, marketing and/or promotion, subsidised land or buildings, and concessional loans or loan guarantees in addition to

revenue foregone in the form of payroll tax and stamp duty discounts. These are coupled with non-financial assistance such as provision of infrastructure requirements, facilitation of development approvals, land rezoning, and relaxed environmental compliance considerations (Industry Commission 1996, p. 334).

In all States, industry assistance is often targeted to particular industries or businesses identified as 'footloose' and able to move location if sufficient incentives are provided. The concept of 'footlooseness' is based on an assumption that project proponents have some genuine flexibility regarding the location of a project, that is, they might locate elsewhere if assistance is not offered. Despite the fact that it is very difficult to establish whether a project is truly 'footloose', the concept is still critical to decisions made about assistance (Auditor-General of NSW 1998, p. 42).

A prime example of a 'footloose' project is the 'call centre'. Call centres are decentralised business centres where all business is conducted by telephone with no face to face human contact. It is estimated that there are around 1000 call centres in Australia employing approximately 60,000 people, and those numbers are growing (Johnston 1999). NSW, for instance, offers a tax rebate of up to $300,000 over five years to new call centres locating in the State. Assuming an average of 60 employees per call centre, this would amount to a subsidy of $5,000 per job. The Government also offers 'advice and assistance' with investment opportunities, expedited Government approvals, and facilitation of negotiations with telecommunications service providers. South Australia and Tasmania have been particularly aggressive in competing with NSW and Victoria for call centres.[2]

Needless to say, one of the more controversial aspects of State Government industry assistance is the competitive environment that has evolved. Businesses often seek to capitalise on this competition by playing State Governments off against each other in order to gain additional assistance, a point that was noted by the Industry Commission comments in its discussion of the US experience:

> There is some indication that firms 'short-list' the regions in which they would be willing to settle before approaching jurisdictions for assistance packages. Some businesses will then approach other regions in which they are not willing to settle in order to obtain a higher bid with which to 'up the ante' in negotiations with the preferred sites. …
>
> If this 'short-listing' situation is common, it has some important implications for the bidding process. It implies that individual jurisdictions can influence the location decisions at the margin, but that the investment was probably going to occur anyway, and locate within the broader group of jurisdictions. This means that, as a group, they have wasted their money and, if they all play the game, over the longer term they are probably cancelling each other out (Industry Commission 1996, p. 56).

[2] Johnston 1999 and see, for example, the Tasmanian Government's designated call centre web site at http://www.callcentre.tas.gov.au (accessed 14 September 2000).

A notorious example from the US of corporate shopping around in a competitive financial assistance environment illustrates how crucial it is for citizens to have access to information about subsidy deals. In the early 1990s, semiconductor manufacturer Intel visited several American State Governments seeking to locate a new semiconductor fabrication plant. It followed up these site visits with a secret report for each State detailing the company's 'wish list' for a perfect site. The wish list included the company's requirements for tax breaks, relocation assistance, permits, roads and utilities. Its more controversial requirements were 'low or zero income tax' and a right to increase air pollution emissions by 100 tons per year. While at least one of the States, California, refused the request, New Mexico granted significant concessions and was successful in attracting the new facility. If Intel's private demands had been made public at the time Intel may have been pressured to moderate their requirements. But because the company made its demands behind closed doors, it largely got what it wanted (Howe and Vallianatos 1998, p. 45).

There is some evidence to suggest that corporate 'shopping around' is alive and well in Australia. Consultant firms assist business organisations in approaching State Governments, and will undertake negotiations on behalf of applicant businesses (Burrell and Verrender 1999).[3] And there are certainly numerous examples of applicant businesses approaching several State Governments at a time with the effect of driving up the incentives on offer. The fact that information regarding incentive arrangements is not made publicly available, however, makes it difficult to assess what is on the 'wish lists' maintained by businesses seeking assistance in this country.

3.3 Industry Attraction Incentives: Some Examples

There are many well publicised examples of investment attraction agreements reached between the various State Governments and private corporations. One of the more recent examples is the Queensland State Government's announcement in late February 2000 that it had reached agreement with multi-national Virgin Airlines to subsidise the establishment of Virgin's proposed Australian headquarters in Brisbane. This agreement came after Virgin gave notice of its intention to enter the Australian budget air traveller market, causing a tussle for Virgin's business between Queensland and at least two other State Governments, Victoria and NSW. Queensland Premier Peter Beattie attributed his State's 'victory' in the 'race' against Victoria and NSW to his Government's 'aggressive approach' to attracting Virgin to Queensland. Apart from emphasising Queensland's geographical proximity to the tourist market, the Government's offer of facilities at Brisbane Airport and 'a very responsive and supportive government', this aggressive approach included the offer of various incentives. These incentives included 'relaxation' of State taxes and charges, 'training support' for Virgin staff, and a contribution to Virgin's relocation and set-up costs as well as some 'marketing support' (Queensland Hansard, 15 March 2000, pp. 398-399). The Queensland Premier claimed that these incentives were offered at no cost to Queenslanders:

[3] For example, Trade Facilitators International is a business network that, according to its website, provides international trade and industry assistance services 'to importers, exporters, manufacturers, suppliers, consultants and industry trade groups'. These services include assessment of the 'most appropriate' incentives provided by Federal, State and Local Government in Australia. See TFI's website at http:/www.tfi.com.au (accessed 7 September 2000).

> If Virgin did not locate here, we would not be getting any of the vast benefits that will flow from the airline. Forgoing some taxes and charges means that we are giving nothing from our existing revenue. Training support means that we are giving Queenslanders skills to earn a living (Queensland Hansard, 15 March 2000, pp. 398-399).

It is the height of naïvety to assume that subsidies in the form of tax breaks and training support do not represent a cost to taxpayers. In one sense, other taxpayers contribute the revenue that the new investor is excused from providing. The Industry Commission found, for instance, that business organisations not receiving assistance were often forced to pay higher taxes to fund selective assistance programs (Industry Commission 1996, p. 49). Other commentators have noted the additional administrative costs involved in the use of tax-financed subsidies (Auditor-General of NSW 1997, p. 47).

Questions have been raised as to just how much was offered to Virgin in order to seal the agreement with the company. The Mayor of the City of Brisbane alleged that the incentives offered to Virgin amounted to $10 million and questioned whether the Queensland taxpayers were going to get their money's worth – claiming that Virgin were always going to locate in Queensland due to its proximity to popular tourist destinations (Queensland Hansard, 13 April 2000, 945; Strutt 2000). The State Government refused to disclose the amount or value of assistance that Virgin will receive, making it difficult to externally assess the likely worth of Queensland's investment.

Despite the often publicly motivated objectives of State Governments in offering assistance to industry there are many examples of subsidy agreements that go wrong, or situations where it is difficult to measure the public benefit achieved through the provision of assistance. Having identified call centres as a popular target for State Government industry attraction incentives, the Victorian Government's agreement with Lufthansa subsidiary Global TeleSales Pty Ltd (GTS) is an interesting illustration of many of the issues that arise from industry attraction deals.

GTS set up business in Victoria in 1998 after Lufthansa negotiated a substantial incentive package from the Kennett Victorian Government. Although the Government sought to keep details of the assistance granted confidential, it is understood to have agreed to payroll tax breaks and significant rent discounts on Government owned accommodation (Foley 2000). After failing to agree on the number of jobs that would be created (GTS said 100, the Government claimed it would be 300), the Government supported GTS in contesting its employees' attempts to gain award coverage in the Australian Industrial Relations Commission (AIRC). The Government argued before the AIRC that in order to attract businesses to Victoria, it was necessary to have an 'encouraging and efficient regulatory framework within which to work' (AIRC Transcript 1998). The Government's lawyers suggested that if the AIRC were to apply more generous terms and conditions to GTS' employees, this would jeopardise Victoria's ability to attract new investment to the State (AIRC Transcript 1998). After a lengthy legal battle with its workers and the Australian Services Union, the company eventually threatened to move the call centre to Cape Town in South Africa if the

workers did not drop their claim for better working conditions (Foley 2000). Faced with this threat to their jobs, the workers reached an agreement with the company based on the terms and conditions offered by GTS. GTS presently employs less than 50 employees, and was still benefitting from State Government assistance in the 1998-99 financial year (Department of State Development, Victoria 1999, p. 103).

The GTS example illustrates the potential for the recipients of assistance to take advantage of the competitive environment in which State Governments seek to attract new investment. It also highlights the paradox presented by State Governments chasing 'footloose' companies. By their very nature, the ease with which these businesses can move **to** a new place is matched by their ability to move **away** when it suits them, whether overseas, or even interstate. This is an especially large problem in the US, where State Governments in the south have had some success at enticing companies to relocate from northern States (GPP 1998). It is also becoming a major problem in Australia, exemplified by the GTS threat to move its call centre to South Africa. Another example is GE Capital, the finance division of US corporate group GE, which is moving the bulk of its existing Australian call centre operations to India (Burrell and Verrender 1999). It is estimated that this will reduce its Australian call centre staff by 70%.

This case study also raises the issue as to whether it is in the public interest for a government to be supporting a business in receipt of taxpayer funded assistance in its efforts to minimise the wages and conditions of its employees. Ostensibly, one of the major objectives of industry assistance is to raise living standards by generating economic growth. In this context, it is reasonable to expect that government assistance is directed towards businesses that are prepared to pursue high labour standards in order to generate high standards of living. Clearly, businesses that wish to pursue only minimum standards are entitled to do so in the normal course of events, and do not require Government industry assistance to facilitate that process.

Another example of extensive government assistance is the incentive attraction agreement that the NSW Government reached with Fox Studios to encourage Fox to establish operations in Sydney's Centennial Park. In 1995 the NSW Government announced that it was entering into negotiations with Fox Filmed Entertainment to develop the Sydney Showground as a film studio complex. After Fox considered taking the development to Melbourne, Queensland or New Zealand (Burrell and Verrender, 1999), the NSW Government secured the Fox Industry Assistance Showground Agreement (FIASA) with Fox in late 1995. The NSW Government announced that the development would lead to the generation of up to 6000 direct and indirect jobs. Fox, on the other hand, estimated that the project would generate 700 film production jobs, 300 entertainment complex jobs, and 1500 jobs in other industry sectors (Auditor-General of NSW 1997, p. 103).

The NSW Auditor General estimated that a State Government subsidy of between $84.8 million and $106.8 million was to be provided for the development, in addition to the lease of 24.3 hectares of public land. According to the Auditor-General, '[I]t remains clear that the benefits of the Fox development to the State have been reduced by the State's financial subsidies, unless they were essential to secure the project. Only Fox knows the answer to that' (Auditor-General of NSW 1997, p. 10). These

figures were disputed by the NSW Government, which maintains that the figure is closer to $25 million (Burrell and Verrender 1999).

The NSW Government's response to the Auditor-General's report alleged that the Auditor-General's report focused only on the financial aspects of this particular State investment. The Director-General argued that this ignored the Government's objective in providing assistance in this case, which was 'not to maximise income from the disposal or lease of the site, but to secure the future of strategic job-creating industry in NSW' (Auditor-General of NSW 1997, p. 8). While there is evidence to suggest that the Fox development has been a successful one in terms of job creation (Burrell and Verrender 1999), this does not exclude the public interest in transparency and accountability. For example, now that the Fox enterprise is successful, should it be obliged to reimburse the Government for some or all of the assistance provided? One suggestion that has been made is that recipients of industry assistance could be subject to a repayment program along the lines of the Higher Education Contribution Scheme, which requires tertiary students to repay tuition fees once they reach a certain income level (ABC Lateline 2000). And if the development was not successful, would the NSW Government be legally entitled to recoup its investment? We will see later in this paper that the agreement reached between Fox and the Government does not address such eventualities.

What becomes clear when attempts are made to research industry attraction incentives is the dearth of information about the details of the agreements reached between State Governments and business. The Premier of Queensland, Peter Beattie, for instance, claimed that if his Government were to release 'the full details of every aspect' of the arrangements made with Virgin, 'it would cost the Queensland taxpayer millions'. The Premier claimed that this was because Queensland would remove Queensland's 'commercial and competitive ability to attract more businesses here and more jobs' (Queensland Hansard, 15 March 2000, p. 399). It is often argued that the details of investment attraction agreements are 'commercial in confidence', and that disclosure would harm the ability of State Governments' to compete for new investment. This is by far the largest stumbling block to achievement of public accountability. Without that information, it is difficult for anyone not involved in the industry assistance transaction to measure whether the public as a whole is indeed benefitting from the money invested by its government.

This begs the question as to what mechanisms are in place to ensure that the recipient of public assistance is doing what it is supposed to do, and to evaluate whether this is generating the anticipated economic and social benefits to the public at large? It is apparent that the answer to the first of these questions is 'we don't know', which makes it impossible to assess the true value of industry assistance.

4. Industry Attraction Incentives: The Legal and Institutional Framework for Accountability

4.1 Regulating for Accountability

Before examining the existing legal and institutional framework covering investment attraction incentives in Australia, it is worthwhile considering some sort of normative model for public accountability. What are we looking for when we examine the regulation of assistance to industry in the context of the public interest?

The concept of accountability is central to several models of democracy, not in the least representative democracy (Held 1987). In examining the concept we accept that, in general, there are three dimensions to accountability that can be postulated in the form of questions: 'who is accountable', 'to whom' and 'for what'? (Scott 2000, p. 41).

The concept of *government* accountability common to the liberal representative model of democracy has been expressed as follows:

> In a very general sense, a person is accountable if they have to give reasoned justifications for their decisions to some other person or body who has a reasonable right to require such justifications. This definition stresses accountability after the decision is taken but, for accountability to be meaningful, there has to be some awareness of the basis on which the decision was taken or the process by which it was taken (Graham 1997, p. 483).

This definition encompasses accountability of government bureaucracy to the public, not simply the internal accountability of public servants to their managers or supervisors.

Accountability of government administration can take many forms, including political accountability through parliamentary procedures such as parliamentary committees and inquiries; legal mechanisms such as freedom of information legislation, judicial review of administrative decisions or audit requirements; or more recently, through economic mechanisms designed to make the public sector more accountable by exposing it to competition with the private sector (Graham 1997, p. 483). It has been argued that these different mechanisms co-exist to some extent, forming complex accountability 'webs' (Scott 2000, p. 57).

In the context of industry assistance, and in terms of the question of **who** is accountable, the need for increased *government* accountability and transparency for industry assistance has been recognised by the Industry Commission as well as by the Auditors-General of Victoria and NSW. The Industry Commission's Report emphasised that improvement of accountability and transparency was a key prerequisite to improving policy decisions on industry by State and Local Government in Australia. The Industry Commission's assessment is predominantly based on the traditional view of government administrative accountability. This encompasses the accountability of departmental bureaucrats to the relevant Minister, and more broadly

of public bodies to Ministers, Parliament and to courts, tribunals (and other grievance handlers), and independent audit processes.

In our view, the traditional model of government accountability is not sufficient to ensure a measure of *participatory* democracy in an environment where government is providing financial assistance to private institutions in order to achieve policy objectives (Held 1987, p. 259). We believe that the broader concept of public accountability will hold the private recipients of government assistance accountable to values that are applied generally in the public sector.

The importance of this extension was recently recognised by the Australasian Council of Auditors-General. The Council noted in its submission to the Victorian Public Accounts and Estimates Committee's *Inquiry into Commercial in Confidence Material and the Public Interest* that the accountability relationship between the individual and the State must affect accountability for commercial dealings between government and private entities:

> The private sector must expect that, when it deals with the State, the disclosure requirements cannot merely be those that pertain to two private sector entities. If the accountability arrangements are the same, insufficient weight will have been given to the need for the State to be accountable to the citizen. …
>
> …Those in the private sector who wish to gain commercial advantage from dealings with the government cannot seek to escape the level of scrutiny that prevails in the public sector. Such scrutiny is required because of the non-commercial nature of much Government activity, the non-voluntary relationship between individuals and their Government and the different rule of law which applies in the public sector to the private sector (Quoted in PAEC 2000, p. 96).

The broader concept of public accountability that we alluded to above incorporates two goals. The first relates to accountability in terms of government *processes*. In the context of investment attraction incentives and the increased use of market-oriented policy instruments, public accountability (the 'who is accountable' question) should encompass both governments and the business organisations benefitting from public assistance (GPP 1998, p. 1). If we apply this extended definition of accountability to the adoption by governments of a policy of generating employment and economic growth by offering incentives to private investors, then it seems logical to expect that such assistance be transparent. Further, both the government and the businesses receiving assistance should be held accountable to the Parliament and to the broader community.

Second, both government and the recipients of assistance should be held accountable on the basis of broad economic and social justice criteria. This is our answer to the 'for what' question. This paper is based on the assumption that the public good is best measured by a combination of economic and social indicators, as opposed to the dominant concept of 'economic efficiency'. There is support for this concept from several academic commentators (Daly and Cobb 1994; Diesendorf and Hamilton

1997; Lutz 1999). In this analysis, labour and living standards, environmental sustainability and social justice are as important as economic efficiency.

While improving the accountability of government and business recipients of assistance to Parliament and to independent offices such as the Auditor-General will improve public participation and access to information, we need to recognise that in this context, business and government should be accountable to the general public (the 'to whom?'question). Accountability mechanisms should be directed towards the attainment of this goal.

In a sense, we are talking about two things – making sure that certain conditions are attached to subsidies to ensure that, ultimately, they contribute to the public good, and to facilitate this, ensuring that the process of providing assistance is transparent in the sense that it is open to public scrutiny. At a time when 'mutual obligation' is being imposed on the recipients of social welfare, businesses that receive government assistance must recognise an obligation to agree to disclosure of sufficient information to satisfy probity and public accountability requirements.

To assist in our examination of the legal and institutional framework for accountability in relation to industry assistance, we have identified four necessary components to a normative public accountability framework (Howe and Vallianatos 1998). These components are:

- Public access to information
- Maintenance of eligibility and performance criteria
- Monitoring and evaluation of assistance
- Enforcement and compliance

The rest of this paper considers the existing accountability framework for State Government industry assistance in the context of these components, and considers some options for improving the framework. How can effective accountability mechanisms be implemented for the range of values, such as social justice and sustainability, that might be considered appropriate in relation to industry assistance?

4.2 Existing Accountability Measures

Many laws enacted by State parliaments, for instance, planning and environmental regulations or industrial relations legislation, are relevant to industry assistance and could be said to involve questions of accountability. This paper, however, is predominantly concerned with the legal and administrative framework for the actual delivery of industry assistance, and with other laws and administrative procedures relevant to the issue of public access to information about that process.

In general terms, industry assistance is normally dispensed in accordance with internal administrative guidelines and agreements between governments and the recipients of assistance. Legislation does not substantially govern the delivery of assistance, with authority for particular assistance arrangements a matter of Ministerial discretion, as has been the case in Victoria after the *Economic Development Act* was repealed in 1992. In NSW, for example, the *State Development and Industries Assistance Act*

1966 is purely an empowering statute. It constitutes the Minister for State Development as a 'Ministerial Corporation' that is empowered to 'promote, encourage and stimulate... the establishment, expansion or development of industries; and... the carrying out... of projects that are likely to assist the establishment, expansion or development of industries' (*State Development and Industries Assistance Act 1966*, s. 11). The legislation does not expressly set parameters or guidelines for the exercise of the discretion granted by the legislation.

South Australia has the *Industries Development Act 1941* and the *Development Act 1993*. The Development Act is mainly concerned with establishing broad planning parameters for new development within the State. The *Industries Development Act* empowers the Industries Development Committee, made up of four members of the Economics and Finance Committee and a person nominated by the Treasurer, to investigate and report on matters concerning assistance to industry referred by the Treasurer, and to perform other functions and duties imposed on the Committee by the Act. It does not mandate external scrutiny of industry assistance.

It is therefore clear that, although legislation grants Ministers or Government departments the power to offer investment attraction incentives, these statutes do not generally set limits within which the power is to be administered. Any formal requirements are established by internal administrative arrangements within the relevant State Government department. In other words, although ultimate responsibility for the decision to award incentives may be retained by the relevant Minister, the Treasurer or the Cabinet, administration of the programs is generally conducted by public servants in accordance with departmental guidelines.

Once a business organisation agrees to establish its business in a particular State in return for assistance, a written agreement is signed by the business and the Government. This agreement contains the terms and conditions upon which incentives are provided. In general, State Governments do not make these agreements available for public scrutiny on the basis that they contain commercially sensitive information and/or their disclosure would jeopardise the State's ability to compete against other States for new investment.

In order to assess the legal and institutional framework for investment attraction incentives in terms of accountability and transparency, it will therefore be necessary to examine the above arrangements in some detail, measured against the four components of our normative public accountability framework identified above.

Public Access to Information

Information is an essential precondition to accountability. There are several stages of the industry attraction subsidy process at which access to information will be important, including:

- **Prior to a decision being made regarding the provision of incentives:** To what extent is information made available to the public, or to intermediate agencies such as the Auditor-General or Parliamentary Committees, regarding an applicant

corporation's finances, employment and environmental record, and previous history in relation to receipt of public assistance?

- **During negotiations over particular industry attraction subsidy agreements:** Are applicants required to make public any promises and projections they make in order to qualify for assistance? This might include information on job creation projections and predicted benefits to the state or local area.

- **After granting of assistance:** Is the public, or independent agencies, kept informed about the performance of companies receiving assistance measured against the projections made in order to gain assistance?

There are two dimensions to the three points raised above regarding access to information in the context of industry attraction programs. At one level is the extent to which governments have access to necessary information about companies seeking assistance, including details regarding the markets they wish to take advantage of. At another level is public access to information about industry assistance for the purposes of evaluation and accountability.

At the present time, there is very little information made available to the public or to independent or external agencies either prior to or during the negotiations over industry attraction subsidy agreements. The Industry Commission noted in its report that although information regarding applicant companies and their market environments were an important factor in the development and implementation of selective assistance policies, even Governments had limited access to such information. This problem was exacerbated by competition among State Governments to attract industry:

> Government decision-makers are likely to be largely dependent on the firms seeking assistance for such information as is available. Because they are significantly removed from the market, and lack the incentives to develop the necessary detailed knowledge, decision-makers are usually in the position of testing the claimant firm's application and supporting material with little, if any, independent information (Industry Commission 1996, p. 42).

The Commission found that in this situation the applicant firm was the only 'player', or participant, to know the relative cost of establishing in each location. It was also the only participant with accurate information on the packages offered by government.

In this environment, applicants are able to hold their cards close to their chest, effectively playing State Governments off against each other. These businesses do not have to publicly disclose how much assistance is being offered to them by respective Governments, nor is the public aware of any company estimates as to the relative costs and benefits of locating in a particular region (Industry Commission 1996, p. 42). In the earlier discussed case of Virgin Airlines, for instance, there was supposedly competition between at least three States to attract the establishment of the company's headquarters. As we noted earlier, however, questions have been raised as to whether or not Virgin intended to locate in Queensland with or without assistance because of proximity to the backpacker market. And in the case of Fox Studios, approaches by

then Victorian Premier Jeff Kennett certainly did no harm to Fox's bargaining position (Burrell and Verrender 1999).

The Commission noted that lack of information about business applicants would not be so much of a problem for governments if applicant firms had an incentive to share their knowledge either during the bidding process or after the assistance package has been awarded (Industry Commission 1996, p. 42). According to the Commission, such disclosure would benefit firms as well as the general public:

> The need for information on the use of public funds to assist individual firms or projects is essential because of the advantage which some assistance can provide to some firms over others. Firms are entitled to know the extent to which taxpayers' funds are being provided to assist a competitor, as are taxpayers (Industry Commission 1996, p. 76).

Having said this, there are some existing mechanisms for maintaining a minimal level of public access to information for the purposes of evaulation and monitoring. These mechanisms are often a combination of legal, political and economic processes, and include information made available to parliament through the departmental annual reporting process; through the activities of Parliamentary Committees; or through the auditing process conducted by the Auditor-General in each State. Another important mechanism is Freedom of Information (FOI) legislation.

State Government departments generally produce an Annual Report, a public document containing a description of the department's activities and its financial statements. While these reports often list the recipients of assistance, they do not disclose the actual amounts provided to particular corporations. The Victorian Auditor-General was critical of this practice, arguing that departmental accountability would be strengthened by annual reporting of the amount and type of industry assistance provided to individual companies (Auditor-General of Victoria 1995, p. 64). Despite this recommendation, the Victorian Department of State Development is yet to alter its practice in relation to what it discloses in its Annual Report. Only the amount of financial assistance provided *in toto* to private companies during the year is reported.

An exception to this practice is the ACT Chief Minister's Annual Report. Since 1998/99, the Annual Report has disclosed details of all projects approved through the ACT Business Incentive Scheme following its inception in 1995/96, including concessions granted, milestones and outcomes achieved (Richmond 2000).

The primary form of legal authority for access to information is FOI legislation. In addition to the Commonwealth *Freedom of Information Act 1982*, each State maintains its own FOI statute. Unfortunately, the effectiveness of these laws is limited by the often wide scope of the exemptions granted, and the time and cost involved in challenging Government refusal to release information. In most cases, exemptions granted for commercially confidential information are broad enough to encompass industry attraction subsidy agreements and related documentation. In some cases, information relating to the provision of industry attraction incentives is specifically exempted (Department of Industry and Trade, SA 2000).

Eligibility and Performance Criteria

What does government require of business applicants for public assistance? If government is to ensure that assistance to industry is a means to achieving particular economic and social benefits, then obviously it is important that there are quantifiable conditions upon which assistance is granted. As noted above, in Australia, State Government assistance to industry is predominantly regulated by internal departmental guidelines and procedures. We recognise that these guidelines may include eligibility criteria, and that decisions may be vetted by departmental heads or Government committees or officials. What we often don't know is whether criteria are based solely on broad economic performance, or whether they include incentives designed to reward firms that provide benefits such as higher wages, or that will employ the disadvantaged or the unemployed, or are committed to environmental sustainability. If the eligibility criteria adopted sets targets in terms of jobs created or economic performance, are these targets formalised as performance criteria that the recipient of assistance is required to achieve?

External scrutiny of these criteria and processes, however, is generally limited to the office of the Auditor-General in each State. In the case of the assistance granted to Global TeleSales Pty Ltd in Victoria, for example, it is not possible for anyone external to the Government to ascertain what criteria or performance standards were built into the industry attraction subsidy agreement signed with the Victorian Government. For instance, was there a requirement that GTS maintain a certain number of jobs in Victoria over the term of the agreement? Have GTS breached that agreement now that the number of people employed by the company has fallen to almost a third of the number of jobs that it initially said would be created?

The Victorian Auditor-General's report on industry assistance in 1995 found that the State Government maintained 'adequate' policy guidelines governing the provision of financial assistance. These guidelines included criteria for assessment of applications for assistance, use of formal agreements outlining the terms and conditions of assistance, linking of progressive payments of assistance to agreed milestones, and provision for ongoing monitoring of projects. The Auditor-General found, however, that there was no provision made to report to Parliament on the performance of projects against performance targets (Auditor-General of Victoria 1995, p. 65).

The NSW Auditor-General was also critical of staff guidelines in NSW, which describe the nature of the schemes and eligibility criteria for assistance. The Auditor-General found that, among other concerns, these guidelines did not provide a step by step process to staff, were not sufficiently specific to guide 'client managers' in how to assess applicants, and were classified as 'commercial in confidence', which the Auditor-General found mitigated against transparency and accountability (Auditor-General of NSW 1998, p. 61).

There are some cases where Governments do make eligibility criteria publicly available. The Victorian Government, for instance, has published broad guidelines and eligibility criteria for its Regional Infrastructure Development Fund. The Fund is intended to revive rural and regional Victoria by, among other things, attracting new

industry development in order to create jobs. Under the published guidelines, submissions for funding are required to demonstrate the applicant's ability to meet a 'significant number' of the identified criteria, including demonstration of local community and industry support, consistency with ecologically sustainable development, creation of jobs and stimulation of regional economic growth, and facilitation of 'integration of your region into global markets' (Department of State and Regional Development, Victoria 2000). The weighting to be given to particular criteria, however, is not information which is publicly available.

The use of the 'commercial in confidence' principle also limits external scrutiny of the agreements reached between Governments and corporate recipients. For instance, South Australia's Department of Industry and Trade maintains that all financial assistance provided by the State is supported by a legal agreement. Disclosure of these agreements, however, is limited because of competition for industry investment: 'As the legal agreements reflect some of the innovative ways in which this State packages its' assistance it is considered prudent not to distribute copies of these agreements' (Department of Industry and Trade, SA 2000).

The NSW Auditor-General's study of the Fox Industry Assistance Showground Agreement (FIASA) does give some insight into practice in that State. The Auditor-General's report notes that it was a condition precedent to the signing of the agreement that the NSW Government guarantee that Fox be paid an indemnity of up to $3.5 million in the event that the FIASA was terminated. There was no corresponding obligation on Fox to reimburse the Government's development costs in the event that Fox decided not to proceed with the project. Notwithstanding this, the Auditor-General reported that the FIASA included several performance criteria and matching sanctions to be imposed in the event of non-performance. While these performance criteria addressed Fox's commitments to develop the land being leased to them, there was little evidence of criteria based on social benefits (Auditor-General of NSW 1997, p. 101).

The exception is an obligation on Fox to use 'reasonable endeavours' to achieve specified levels of employment. As noted earlier, the NSW Government and Fox announced significantly different estimates as to the employment that would be generated by the Fox Studios development. The levels of employment specified as performance criteria in FIASA are limited to the direct employment effects of the studio, and establish a staggered target commencing at 150 employees in 1998-99 and reaching 500 employees by 2005-06 (Auditor-General of NSW 1997, p. 99). Fox, however, would not give written guarantees as to performance indicators based on minimum usage of the facilities and Australian content. The Auditor-General observed that the Chief Executive of News Corporation had indicated to the NSW Premier that the inclusion of binding production performance indicators would result in the project going to another State (Auditor-General of NSW 1997, p. 103). The Auditor-General concluded that apart from the intended direct employment benefits associated with the Studio, the FIASA did not provide for monitoring of performance in relation to the economic effects on New South Wales, nor did it provide for action to be taken to ensure that performance targets were obtained (Auditor-General of NSW 1997, p. 106).

Monitoring and Evaluation

Assuming that assistance has been made conditional on performance criteria, then it might be expected that particular assistance arrangements are regularly monitored and evaluated in accordance with this criteria and any other conditions. The Industry Commission noted that in general, State Governments maintained two processes for monitoring the performance of their industry assistance programs. These processes were individual program monitoring by the administering department, and independent verification of the integrity of the department's operations by the State's Auditor-General.

In relation to the first of these processes, the Commission found 'very little evidence of systematic ex-post evaluation of assistance programs by the States, including selective assistance programs' (Industry Commission 1996, p. 85). The NSW Auditor-General observed that the economic analysis undertaken by the Department of State and Regional Development's Policy and Resources Division was not clearly documented or adequately justified, and that the policies and procedures to ensure consistency in approach were inadequate (Auditor-General of NSW 1998, p. 53).

The Industry Commission also found that while many major projects were evaluated prior to any decision to provide assistance, problems in evaluation techniques caused a general bias towards prediction of positive outcomes (Industry Commission 1996, p. 89). The Commission recommended that all assistance programs be evaluated prior to their introduction based on best-practice evaluation tools, with the evaluation made public.

The comments of the Industry Commission and the NSW Auditor-General in relation to evaluation of industry assistance questions the basis upon which the effectiveness of assistance is assessed or evaluated. It seems that in general, States evaluate assistance arrangements based on economic cost/benefit analysis. The Industry Commission was critical of the tools used by State Governments in evaluating the effectiveness of projects. The Commission noted that:

> [i]n particular, multiplier analysis is frequently misused to overstate benefits, and identification of costs and benefits is deficient when more than one tier of government is involved in financing the project. The institutional arrangements often incorporate 'moral hazard', whereby the agency with the interest in the project proceeding undertakes or commissions the analysis (Industry Commission 1996, p. xxxi).

The Commission found that evaluation was made even more problematic because of the difficulty in gathering information on the amount of revenue forgone by State and Local Governments as a result of exemptions and rebates granted to individual companies (Industry Commission 1996, p. 14). In addition to the Industry Commission's observations, the Victorian Auditor-General noted that in that State, the responsible Department itself questioned its own capacity effectively to evaluate assistance arrangements. This was because of 'the difficulty involved in attributing a direct link between the level of assistance provided to companies and the achievement of the Program's objectives of enhancing the State's economic growth' (Auditor-

General of Victoria 1995, p. 61). Perhaps this difficulty is related to the imprecise nature of the concept of 'economic growth'.

In addition to this internal evaluation, provision of industry assistance is subject to the usual auditing procedures conducted by the Auditor-General for each State. While the respective Auditors-General may apply differing methodologies in the conduct of audits, the legislative principles underpinning the audit process are similar. This audit role is based on the principle that the government of the day has an obligation to account to the public for its use of public funds in that it must ensure that the funds are raised properly, protected from loss and used only for the purposes approved by Parliament, and that value is obtained for money spent. (Auditor-General of Victoria 1997, p. 322).

The reviews in 1995 and 1998 by the Victorian and New South Wales Auditors-General were conducted under the legislative provisions relating to performance auditing in each jurisdiction. In Victoria, the *Audit (Amendment) Act 1999* provides the Auditor-General with almost total discretion in the selection, timing and scope and resourcing of performance audits. In other words, as is the case in most States, it is up to the Office of the Auditor-General as to whether or not to audit and report on industry assistance. This discretion is often limited by the extent of resources available to the respective Auditors-General.

Finally, although the Auditor-General is responsible for reporting on the performance of the administrative system, he or she has no power to ensure that audited agencies implement any recommendations made. It is up to the Parliament, normally through parliamentary committees, to investigate or follow up on information supplied to it through an Auditor-General's report. For instance, in Victoria the Public Accounts and Estimates Committee holds that responsibility. That committee noted in its recent Report, *Inquiry into Commercial in Confidence Material and the Public Interest*, that it was the only parliamentary committee denied information on the grounds of commercial confidentiality during the Kennett Government's second term (PAEC 2000, p. 48). This was despite it having the primary role of scrutinising the Government's budget and all aspects of public administration.

In general, there has been limited independent audit coverage and reporting in Australia on the various industry assistance programs in recent years. This reinforces the desirability of government departments and agencies charged with implementing the various incentives reporting comprehensively to the parliament on such incentives in both quantitative and qualitative terms. This leads into consideration of the extent to which governments are prepared to ensure compliance with any conditions attached to industry assistance.

Enforcement and Compliance

Assuming that there will be some instances where recipient businesses do not meet the conditions or minimum standards required of them, it will be important for governments to maintain an effective enforcement mechanism that is pursued in situations where there is a breach. We will demonstrate that in Australia, enforcement and compliance is generally conducted within State Government bureaucracies.

Information about this process is not publicly accessible, and there is little evidence to suggest that State Governments penalise companies that stray from their obligations (whatever they may be) under industry assistance agreements.

This may in part be due to some of the problems with monitoring and evaluation raised above. It may also be because Governments are reluctant to impose financial obligations on struggling businesses, or due to a perception that public enforcement of industry assistance agreements may discourage potential investors. The assymetry in the process of awarding industry assistance also appears to encourage 'spend and forget' practices.

It is likely that most Australian States are, at least in theory, entitled to enforce industry assistance agreements. The Queensland Government, for instance, requires that assistance recipients sign a fixed term agreement. In the case of Virgin Airlines, the Government maintains that its agreement with that company is for a period of five years (Queensland Hansard, 15 March 2000, p. 399). It says that if Virgin does not perform its part of the agreement, including the achievement of job targets set by the Government, then it will be required under the agreement to repay any funds provided. This arrangement is apparently supported by a bank guarantee, although this seems inconsistent with the Premier's assurance that the Government did not pay any funds to Virgin. In practice, while Queensland frequently sets performance targets in its agreements, and requires bank guarantees, it rarely, if ever, enforces these agreements against an underperforming company (Strano 2000).

In the case of Fox Studios, it is clear that the FIASA specifies sanctions in the event that Fox fails to meet any of the performance criteria set out in the agreement. In all cases, however, these sanctions are limited to the cessation of industry assistance or surrender of the lease (Auditor-General for NSW 1997, p. 101). While these generally discretionary sanctions, if imposed, would have significant implications for Fox, they are not penalties as such. Another issue is that many of the performance criteria are expressed in non-specific language, so that, as mentioned earlier, Fox is expected to use its 'reasonable endeavours' to achieve specified levels of employment. It would not be difficult for Fox to argue that even in failing to achieve nominated employment levels it had used 'reasonable endeavours', therefore avoiding liability for sanctions.

4.3 Competition Among States and Commercial in Confidence

As we have seen, the two factors most often cited as barriers to improved transparency and broader accountability of industry assistance programs were competition between the States to attract new investment, and commercial confidentiality. These factors are not necessarily mutually exclusive.

This competition between States, often described as 'competitive federalism', can be likened to a private auction of real estate, where businesses are the vendors, and State Governments adopt a 'beggar-thy-neighbour' attitude, making secret bids of taxpayer funds. States perceive this as a 'battle' for new investment, where there are victors and there are the vanquished – this suggests a combative, as opposed to a competitive, environment.

The Industry Commission noted that '[a]ssistance packages provided by State Governments to individual firms or organisations are often subject to competing offers from other States, with large firms actively soliciting assistance and encouraging competition between jurisdictions for the location of major new investments' (Industry Commission 1996, p. 3). This combative environment is not necessarily appreciated by all businesses seeking assistance. Companies surveyed by the Victorian Auditor–General in 1995 expressed concern regarding:

> the competitive nature of the environment particularly in terms of some aggressive strategies adopted by other states to lure investment activity. These strategies have included:
>
> - direct approaches made by Government to companies to relocate interstate;
> - the willingness of some States to provide larger financial incentives;
> - the provision of free or highly subsidised land; and
> - assistance with the building of new production facilities (Auditor-General of Victoria 1995, p. 74).

The use of the 'commercial in confidence' principle is often justified on the basis that disclosure of information regarding subsidy deals would jeopardise a State Government's ability to successfully compete for investment against other States. Commercial confidentiality is also used to prevent public disclosure and analysis of industry assistance subsidies on the basis that the companies bidding for assistance provide allegedly commercially sensitive information to the Government.

The Commission concluded that '[w]hile business legitimately seeks to keep certain information confidential for commercial reasons, the impression gained from a review of much of the debate is that commercial-in-confidence is used by government far more widely than is necessary, and *far more widely than industry appears to consider warranted*' (Industry Commission 1996, p. 78, emphasis added). The Commission argued that if firms or individuals were prepared to accept public funds, then it would not be unreasonable if one of the conditions of that assistance being provided was to have the details of the assistance made public (Industry Commission 1996, p. 83).

The concept of commercial in confidence was recently considered by the Victorian parliament's Public Accounts and Estimates Committee (PAEC) in its *Inquiry into Commercial in Confidence Material and the Public Interest*. The PAEC concluded that 'the wide interpretation and common usage of the term commercial in confidence throughout the public sector has resulted in a broadening of the scope of commercial confidentiality beyond that which is legally warranted' (PAEC 2000, pp. xxi-xxii).

Others have raised the issue of the impact of aggressive industry attraction programs on the urban environment and amenities (Engels 1999). According to this view, competition between States and the emphasis on high-profile investment means that government funding is directed away from social policy areas and into spending designed to make cities seeking to attract investment more 'market competitive' (Engels 1999, p. 118).

The Industry Commission found that most State Governments were aware of the costs

that can be involved in bidding for industry. At the same time, however, it was difficult for individual States to withdraw from the bidding war because of the potential or perceived losses involved, known as 'the prisoner's dilemma'. The Victorian Government noted in response to a suggestion by the Victorian Auditor-General that '[t]he provision of additional information is not envisaged given the competitive position referred to [earlier in the Report] and the approach taken by other governments' (Auditor-General of Victoria 1995, pp. 64-65). The Queensland Premier's comments about the perceived negative consequences of disclosure on Queensland's ability to compete for new investment were noted earlier.

Significantly, the level of financial assistance to industry may be less about what is necessary to generate measurable economic growth or social benefits and more about the extent to which business applicants for assistance can take advantage of competition among the States. 'In such an environment, there is a greater expectation by industry participants for financial incentives and, spurred by the competitive forces, the amount of financial assistance tends to escalate' (Auditor-General of Victoria 1995, p. 50). Coupled with the mobility of many of the nomadic or 'footloose' companies sought by State Governments, this can lead to 'poaching' of industries by one State from another. This is a practice that would not appear to generate any net benefit for Australia as a whole.

5. A New Framework for Public Accountability

It is clear from the foregoing that the present regulatory framework in terms of the accountability of industry assistance in Australia is inadequate. Yet alternative public accountability models do exist that could be implemented in this country.

We maintain that an effective way to maintain accountability and transparency in provision of assistance to industry is through a comprehensive legislative framework. Having said this, a legal model of accountability will only be part of what is required to ensure comprehensive public accountability. Genuine political accountability and public participation in the political process are necessary elements of an effective public accountability model. Moreover, business compliance will be essential.

There are three aspects to the accountability model adopted above. The first is the importance of transparent processes. The second is the issue of the values adopted in accountability processes - how do we measure accountability? The third is the question of 'to whom' is government and business accountable in this context?

5.1 Improving Access to Information

Public access to information regarding industry assistance in Australia is extremely limited. The public does not enjoy, as the citizens of many American States do, a constitutionalised 'right to know'. It is apparent that accountability laws in Australia such as freedom of information legislation, or the powers available to the Auditor-General in each jurisdiction, are inadequate and fragmented.

The increased use of commercial confidentiality by government has been a major impediment to ensuring public access to information. Even in Victoria, where the Australian Labor Party's election victory in late 1999 was at least in part attributed to the previous Government's excessive secrecy, some commentators have expressed concern that little has changed under the new Government (Hannan 2000).

In its report, the Industry Commission noted that selective industry assistance 'requires decision-makers in government to be well informed about the impact of the project and of the costs of the assistance. The electorate also needs to be informed to be able to evaluate whether governments are making sound decisions in the community's best interests' (Industry Commission 1996, p. 87). What can be done to ensure that the electorate is so informed?

At the very least, State Governments are in a position to wind back the excessive reliance upon commercial in confidence that does so much to block accountability and transparency in this area. An initial step that could be taken by State Governments is the adoption of the 'Draft Principles of Commercial Information Provided to Victorian Government Agencies by Individuals and Organisations' recently proposed by the Victorian Parliament's Public Accounts and Estimates Committee (PAEC or 'the Committee').

The PAEC, like the Industry Commission, felt that there was a significant public interest in disclosure of information where expenditure of public funds was concerned. The PAEC observed that the notion of protection of commercially sensitive information was linked to the ability of businesses or organisations to maximise their profitability. This can be contrasted with the function of government, which the Committee felt was 'to act in the interests of the whole community'. While the Committee conceded that government must seek to operate efficiently in performing this function, '[i]ssues other than production costs, such as community satisfaction, the public interest, privacy and equity must be considered'. Although making information publicly available 'may deny the government a possible financial benefit', the public interest would be served 'by enabling the community to be aware of the criteria for particular decisions' (PAEC 2000, p. 81).

The principles developed by the PAEC are designed to assist government agencies in their handling of information provided by organisations or people outside the public sector, and include the following:

- confidentiality should be agreed to only in circumstances where it is justified by the nature of the information, the circumstances in which it is imparted and the likelihood of actual harm to the commercial interests of the individuals or organisations which provide the information, and only after having regard to any countervailing interests in favour of disclosure;

- in assessing whether or not there is public interest in disclosure, agencies should bear in mind that both the Parliament and the public have rights of access to information which enhances understanding of the activities of government agencies and which is necessary to monitor the use of public funds and the probity and integrity of the processes used.

The PAEC recommended that in future, government agencies should inform third parties who propose to provide information on a voluntary basis that the agency is 'required to act in accordance with a policy that favours disclosure to the public of information concerning their commercial dealings', and that the agency has 'a duty to disclose information to the Auditor-General, the Ombudsman, Parliamentary Committees, the responsible Government Minister or the courts as well as to the public under the Freedom of Information Act or under other legislation which requires the publication of information concerning tenders and contracts' (PAEC 2000, p. lx).

We suggest that any attempts to improve access to information in the context of industry attraction assistance must consider a comprehensive approach to this issue. Access to information and public participation could be features of each stage of the process of awarding industry assistance.

For example, State Governments could establish procedures to ensure disclosure of information *prior* to the grant of subsidies, including:

- Timely public notice that discussions with a new investor have reached the point where significant incentives are to be offered, for instance, 60 days prior to a final decision being made.

- Public hearings for full review of incentive packages prior to final approval, at least in the case of major subsidy agreements. The record of the business organisation seeking a subsidy should be subject to scrutiny, including whether the company is seeking to relocate from another State within Australia and, if so, on what grounds. The record of the applicant business in terms of compliance with the law, subsidies received in the past, observance of high labour standards, and social and environmental performance could also be scrutinised.

- Preparation and publication of local socio-economic impact assessment prior to conveyance of subsidies. For instance, as with environmental impact statements, by requiring that these reports are circulated for public comment prior to being finalised, perhaps by ensuring that community stakeholders have a role in preparation of the impact assessment.

Once subsidies are granted, the following processes could be established to ensure on-going public accountability:

- Public disclosure of the amount of incentives received by businesses, the amount of taxes paid, and an assessment of the social, economic and environmental costs and benefits flowing from the subsidised business.

- Businesses receiving assistance would be required to periodically disclose job creation and asset flow, including overseas investments.

- Require early notice of changes in technology, early notice of plant closure, layoffs or downsizing (Howe and Vallianatos 1998, p. 47).

Although we may be accused of being commercially naïve by suggesting that applicants for assistance be required to disclose such information, we note that some State and Local Governments in the United States already require disclosure in certain circumstances. The City of Boston, for instance, requires applicants for public contracts or financial assistance to file a detailed application which is made available to the public prior to any decision being made. Applicants must give details of the number and salaries of employees, projections for future employment and wages, numerical goals for filling new jobs with local residents, and the total cost of assistance to the city (Howe and Vallianatos 1998, p. 44).

A comprehensive mechanism for public access to information such as that proposed above may be an alternative to a prescriptive regulatory framework. In circumstances of full disclosure both the public and the various parliaments would be in a position to determine whether or not expenditure and incentives are justified.

Although full public disclosure is preferable, increased scrutiny through independent officers such as the Auditor-General would be an improved mechanism for accountability. One route would be for State Governments to require the relevant department to submit all details of industry assistance agreements to the Auditor-General on an annual basis, allowing the Auditor-General to make full disclosure of particular subsidy arrangements. The Auditor-General could be asked to conduct a detailed review of industry assistance on an annual basis, with the Government facilitating this by providing additional resources to the Audit Office.

Information, however, is only one aspect of an effective public accountability model. Many of the above recommendations could be built into the performance standards expected of businesses receiving assistance.

5.2 Legislated Eligibility Criteria and Performance Standards

It is apparent that most, if not all, State Governments maintain some form of eligibility criteria for their industry assistance programs as part of internal administrative procedures. It also seems that, at least in principle, most investment incentive agreements include performance criteria that recipients of public assistance are expected to meet.

We contend that these internal arrangements are inadequate given the large amount of public assistance that is being provided to recipient businesses. There is overseas support in both theory and practice for an industry assistance accountability model based on the principles of public law rather than on purely contractual arrangements (Webb 1993, p. 509). In other words, where assistance is conditional on the achievement of stated objectives such as the creation of a certain number of jobs, disbursement and administration of government incentives should not be treated as a private commercial matter between government and recipients. Instead, the program should be fully structured by public law notions of natural justice and procedural fairness.

Under this model, institutions such as the Auditor-General and parliamentary committees 'represent only modest examples of political accountability in incentive operation' which assist individual actions against public officials for alleged maladministration (Webb 1993, pp. 506-507). According to this view, a greater problem for those who favour public accountability is the introduction of incentives through 'unobtrusive' methods such as administrative documents and executive action. The solution to this problem is more formal regulation of investment incentive programs:

> Legal accountability can be enhanced if there is insistence upon more thorough and detailed elaboration of proposed incentive programs in statutes and regulations promulgated through the normal Parliamentary legislative process (i.e., as with the introduction of conventional regulatory initiatives)... [in such cases] the potential for arbitrary exercise of authority is reduced and the ability of all concerned to stay within the intended parameters of program operation is enhanced (Webb 1993, pp. 507-508).

In the United States, where competition among States for new investment has been a thorny issue for many years, some States have enshrined accountability measures in legislation as a means of ensuring that assistance is publicly accountable and transparent (Howe and Vallianatos 1998). This legislation often incorporates aspects of the accountability model adopted in this paper, including the establishment of eligibility criteria, performance targets and compliance procedures, with provision for public access to information. An example is the *Maryland Job Creation Tax Credit Act 1996* which was discussed earlier. State Governments in Australia could consider adopting similar legislative frameworks.

An important aspect of these legislated frameworks is the nature of the criteria upon which assistance programs are evaluated. It is to those criteria that we now turn.

Socio-Economic Benefits

Due to the excessive secrecy surrounding investment attraction agreements, it is difficult to assess the extent to which State Governments look beyond purely economic measures of growth when establishing performance standards for recipients of subsidies. It seems that in many cases, Governments evaluate the success of assistance on the basis of the number of jobs they expect will be created, or the amount of money invested, rather than an assessment of the quality of outcomes achieved. Even the Industry Commission was critical of State Government attempts to satisfy standards of measurement solely on the basis of a cost-benefit analysis.

While there is evidence that some Australian States value broader socio-economic criteria as well as economic efficiency, it is difficult to ascertain the extent of this practice, and even more difficult to know the relative weight given to such factors when determining assistance.

The concept of public accountability adopted in this paper suggests an increased emphasis on the quality of outcomes in relation to investment incentives. As it stands

at present, the use of incentives to attract new industry is often premised on the assumption that new industry will generate economic growth, which will in itself create employment and generally make everyone better off. It is this assumption that drives much of the media attention and publicity value afforded to 'success' in attracting new investment. There are many other factors, however, that improve people's sense of well being including contented family lives, satisfying jobs, education, health care, social fairness and a high quality environment.

For example, Phil Bereano of the University of Washington has set out a 'process criteria', or steps that would make it easier to assess any subsidy's social worth. This would involve the responsible government agency disclosing all of a program's expenditures, aims, and direct and indirect costs (Laird and Reich 1998, p. 2). Another possible source is the Genuine Progress Indicator developed by The Australia Institute in Canberra which incorporates measures of well-being that are missing from more narrowly focused traditional indicators such as the Gross Domestic Product (The Australia Institute 2000).

American economist Timothy J Bartik argues that targeting of firms likely to provide greater 'social benefits' at lower incentive costs is more rational than targeting based on political pressure or media attention (Bartik 1996, p. 43). Bartik identifies reasonable targets as being those jobs that pay higher wages or firms that hire the local unemployed or disadvantaged. According to Bartik, a more rational basis for targeting will ensure that firms which provide social benefits would be preferred over large new branch plants that attract more media attention but are less likely to ensure a social return on public investment.

There is significant international support for the adoption of socio-economic criteria such as high labour standards and environmental sustainability in relation to public assistance to industry. It is increasingly recognised in academic literature, for instance, that high labour standards can be integral to improved economic performance (Deakin and Wilkinson, 1994). This is often described as 'taking the high road' to economic growth, as opposed to the 'low road' of driving down wage levels and other forms of social regulation in order to generate employment and economic activity. International bodies such as the OECD, for instance, have recognised that incentives which are intended to create employment should be hinged on some level of job quality: 'Tax concessions or employment subsidies for the creation of low-wage jobs should probably be avoided, unless countries are persuaded that there are large social gains from such incentives' (OECD 1994, p. 33).

State Governments could ensure high labour standards by making industry assistance conditional on both existing minimum labour standards endorsed in Federal and State industrial jurisdictions, as well as other benchmarks. Other standards that might be recognised include equal opportunity employment practices, preference for full or part-time positions over casual employment, and provision for career training in line with overall vocational, education and training goals. Preference might be given to applicants who will employ disadvantaged workers, or who are prepared to locate in economically depressed regions.

There is broad academic support for the use of environmental and economic

instruments to redirect business organisations away from environmentally destructive industry to socially beneficial activities with little or no environmental impact (Hamilton 1997; James 1997; Van Dyke 2000). Policy instruments such as subsidies and tax incentives can also be effective in promoting activities which actually repair or counter environmental damage.

Governments in the United States have relied upon a variety of measures to ensure that subsidies and tax breaks address genuine job shortages, living standards and environmental issues. These measures include those directed to employment creation, retention and quality; targeted hiring based on affirmative action; wage and benefit standards, 'anti-poaching' and anti-relocation requirements; and environmental protection. Maryland's *Job Creation Tax Credit Act 1996* requires successful applicants for the tax credit to meet certain labour standards. Applicants are required to state the number of jobs that will be created by the new investment, and the payroll for those jobs. The company is also expected to provide follow-up data regarding jobs created so that the tax credit can, if necessary, be recaptured or recalculated. To qualify for the credit, a business must create at least 60 full time, permanent positions over two years that pay at least 150% of the US Federal minimum wage.

Santa Clara County in California is obligated under the ordinance governing a particular tax break program to 'look more favourably' on applicant companies that engage in 'socially responsible practices'. The nominated practices include fair labour practices, workplace health and safety policies, child care for workers, employing graduates of local job training programs, locating projects so that workers can use mass transit, and policies that reduce the use of toxics and prevent environmental damage (Howe and Vallianatos 1998, p. 52).

Legislation need not be framed in a 'command-and-control' format, where government rules are enforced by penalties or other sanctions. For instance, it might simply provide that eligibility for assistance be dependent on corporations adopting codes of conduct or undertaking to pursue socially responsible activities. The State of Iowa, for instance, passed legislation which requires all competitive incentives programs administered by the State to give priority to applicants that enter 'good neighbour agreements'. A good neighbour agreement is defined as 'an enforceable contract between the business and a community group or coalition of community groups which requires the business to adhere to negotiated environmental, economic, labor or other social and community standards' (Howe and Vallianatos 1998, p. 47).

Compliance

There is little point to the establishment of performance criteria and evaluation processes if recipients are easily able to avoid any obligations imposed upon them. While many businesses no doubt comply with the agreements reached between State Governments, there may be others who for one reason or another are unable to meet obligations under the agreements. Given that corporate or business accountability for public assistance is a feature of our concept of public accountability, how do we propose to address compliance?

One option is for Governments to penalise non-compliance, using 'recapture' or

'clawback' provisions that require 'subsidy abusers' to repay some or all of the financial assistance provided to them. Subsidy abusers may also be subject to monetary penalties, or banned from receiving further public assistance. For instance, the State of Nevada in the United States offers a tax reduction to new and expanding businesses that create 75 new jobs and invest between $250,000 and $1 million in that state. Businesses receiving the reduced tax rate must provide specified terms and conditions to their employees. If a business fails to meet these obligations, then it must repay the full amount of the tax exemption (Howe and Vallianatos 1998, p. 50).

One of the features of a comprehensive public reporting process could be its capacity for penalising non-complying companies by naming them in Parliament. This sort of compliance measure has been adopted at Federal level in Australia, such as in the *Equal Opportunity for Women in the Workplace Act 1999* (Cth). Businesses could also be required to adopt open public accounting of labour standards and observance of environmental standards in their annual reports.

An important caveat relates to the distinction between having a penalty or clawback provision on paper, and its enforcement. State Governments may be reluctant to enforce performance targets in industry attraction subsidy agreements because of fears that this will force the business into liquidation or prompt it to move elsewhere. Ideally, this problem is best addressed at the stage where Government is reviewing the viability of offering assistance to applicants. On the other hand, effective enforcement of penalty clauses in agreements may reduce future compliance problems.

One of the criticisms of traditional legal regulation is that enforcement of legal norms is often problematic (Grabovsky and Braithwaite, 1986). Another option is to make some of the incentives offered to companies conditional on companies demonstrating their observance, or bettering, of the performance standards required of them. Alternatively, governments might require new investors to adopt voluntary codes of conduct in relation to labour and environmental standards, or to enter into agreements such as the Iowa 'good neighbour agreement' described earlier.

Legislated standards will not on their own ensure public accountability for social values. Public scrutiny and pressure are important to motivate governments to adopt and utilise measures such as those described above.

5.3 Cooperation or Competition?

A legal framework must also address the issue of the combative environment in which State Governments offer investment attraction incentives. This competition is a major barrier to public accountability in relation to investment attraction assistance.

The Industry Commission considered several options for an agreement between the Australian States and Territories on industry assistance that would reduce inter-state rivalry and strengthen internal markets. The Commission noted a range of issues that could be addressed in such an agreement, and settled on three models. The first was an agreement that would be limited to transparency and accountability, with the States

remaining free to provide industry assistance to firms within their jurisdiction. The second option canvassed by the Commission was one which would limit firm or project specific forms of State industry assistance, thereby restraining competition for particular investments. The third option considered by the Industry Commission was a more comprehensive agreement seeking to limit all State assistance to industry (Industry Commission 1996, pp. 123-126).

While the Industry Commission models are in general focussed on limiting assistance altogether, there is no reason why such an agreement could not acknowledge the importance of public assistance while operating to limit 'poaching' between States and encouraging the linking of assistance to the achievement of specified socio-economic outcomes.

An existing institution that provides a forum for discussion of State cooperation in relation to investment attraction subsidies is the Council of Australian Governments (COAG). The Industry Commission suggested that COAG would be the appropriate body to begin the process of formulating an agreement between the States. Another option would be to expand the scope of the jurisdiction of the Australian Competition and Consumer Commission (ACCC) to enable it to monitor competition between State Governments and ensure that all States acted in a consistent manner. If all States were required to disclose information about industry assistance under this scheme, no particular State would be disadvantaged by doing so. In turn, applicant businesses would have to accept at the outset that in order to obtain public assistance there would have to be some level of public accountability.

While some States supported the concept of an agreement on industry assistance, as with many of the Industry Commission's recommendations, there is little evidence to suggest that States have seriously addressed the issue. One of the major stumbling blocks to an agreement is the lack of intervention by the Australian Commonwealth Government in this area. The Mortimer Report recommended that Invest Australia negotiate formal agreements between the States and the Commonwealth, 'and develop a clear set of guiding principles governing the respective roles of the Commonwealth and States in investment promotion, attraction and facilitation' (Review of Business Programs 1997, p. VII). The Commonwealth's policy on industry assistance states that it is committed to negotiating 'clearer Commonwealth and State and Territory roles and responsibilities in relation to investment promotion and facilitation' (Department of Industry 1997, p. 39). It is not apparent that this extends to a formal agreement. While the Commonwealth has emphasised its own accountability mechanisms in relation to Federal industry assistance, it is unclear to what extent it has encouraged State Governments to follow suit.

Apart from the problems generated by the party political differences between some State Governments, it should also be noted that any accord or agreement between them is likely to be stymied by a perception that economically stronger States such as Victoria and NSW will benefit more from such an agreement. Having said this, there may be scope for a regional agreement now that Labor Governments preside in the eastern states of Queensland, NSW, Victoria and Tasmania.

6. Conclusion

In a recent article addressing accountability and governance, Colin Scott notes the limitations of existing webs of government accountability, primarily ‘a marked lack of transparency in the traditional informal arrangements of government, and in many of the new mechanisms of contracting out, and a lack of scope for broad participation in decision making’ (Scott 2000, p. 58, footnotes omitted).

Many of the concerns raised in this paper mirror Scott’s assessment of accountability in modern government. The lack of available information regarding investment incentives and the accountability mechanisms attached to them is central to our study. While State Governments may maintain administrative oversight and internal accountability mechanisms for their investment attraction subsidies, it is impossible to make any external, independent assessment of the adequacy of these measures of accountability.

Public assistance to industry, as we have emphasised, is a legitimate way for governments to participate in economic activity. What is lacking is a comprehensive accountability framework that addresses the transparency of assistance, and the criteria upon which it is granted.

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