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ISSN 1322-1876
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A taxing campaign

The mining organisations are outraged that the government should contemplate a Resource Super Profits Tax aimed squarely at their bottom lines. Richard Denniss discusses why such a tax is necessary and fair and explains how it might work.

There is no doubt that the mining industry needs to pay more to Australian citizens for the resources it takes from them to sell to others. Miners can no more complain about having to pay for the coal and iron ore they sell than a baker can complain about having to pay for flour. But complain they have, at record volume and at record expense.

The whole point of the Rudd Government's so-called Resource Super Profits Tax (RSPT) is to take some of the surplus billions the miners have been making from selling Australia's resources and share them around the rest of the economy. So it shouldn't come as a total surprise that the big mining companies are willing to spend a fair chunk of these 'super profits' trying to hang on to them.

What has come as a big surprise, however, is the political pain that the Rudd Government has suffered by exempting itself from its own guidelines that were designed to prevent governments from spending taxpayers' money on political advertisements.

Rather than explaining why the

new mining tax is both necessary and fair, the government has found itself explaining why its advertisements are necessary and fair. Given the strong rhetoric by the Prime Minister in the lead-up to the last election, it seems the government is having even more trouble selling its \$38-million-advertising campaign than it is selling the tax. Of even greater concern, however, is the simple fact that every minute spent defending the advertisements is a minute spent not prosecuting the case for the tax.

So what is that case? What is a 'super profits tax' and why do we need one? Even though the Institute hasn't been paid \$38 million, it's important to try and answer these straightforward questions. So, here goes.

What is a super profit?

Economic theory suggests that in 'perfect competition', all companies will compete so ruthlessly with each other that the price they charge consumers will be just enough to cover their costs and make adequate profit to keep them from quitting the business altogether. This very low level of profit is called 'normal profit'.

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In the real world, however, it has been suggested that some firms earn slightly more than this 'normal profit'. Indeed, some keen observers have even spotted firms earning what are technically referred to as 'obscene profits'.

A scattering of economists, and a majority of politicians, believe that these sightings of the so-called 'obscene profits' are no more reliable than sightings of the Loch Ness monster. Economic theory reassures them that such an aberration couldn't exist.

The mining industry needs to pay more to Australian citizens for the resources it takes from them to sell to others.

On the other hand, most economists and an apparent minority of politicians believe that not only are such profits possible in a market, they are in fact quite common. The cause is simple—perfect competition almost never exists and most firms have some degree of 'market power' that allows them to earn bigger profits than would be the case in perfect competition.

Market power can come from many sources. Telstra has a huge investment in wires and phone towers, which makes it hard for smaller firms to compete with it. Qantas has a huge network of flights that makes it relatively easy for passengers to get to almost any city from almost any city. Small airlines find it very hard to carve out more than a small niche. And existing mining companies have exclusive access to some of the biggest and best reserves of raw materials in the world.

Why is the government targeting mining companies?

The economics of mining are about as far away from the economics of 'perfect competition' as you can get. While there is a world price for commodities such as coal, iron



ore and gold, the cost of extracting them varies wildly from one mine to the next. In some mines, the minerals are close to the surface, easy to extract and found in rich concentrations so that the costs of extraction and refining are relatively low. In other mines, where the resources are harder to reach and of poorer quality, costs are much higher.

The combination of a world price for a commodity and a wide range of production costs means that some mines make very large profits (called 'economic rents') while other mines barely break even. Much is made of the impact of taxes, wage rates and other costs on these break-even mines, but public debate is usually silent on the impact, or lack of it, of these minor fluctuations in costs for the majorly profitable mines. While the break-even mines ride a rollercoaster of fluctuating world prices and fluctuating production costs, the most profitable mines simply sit back and rake in their 'super profits'.

But don't the miners pay 'too much' tax already?

The miners are spending a lot of our money running ads about the \$80 billion they have paid in taxes in recent years, but in the scheme of a trillion-dollar-plus economy, that is not actually a lot of tax. Indeed, an analysis by the Institute's David Richardson has shown that if profits are compared on the basis of the national accounts, in the

nine years since the Howard Government introduced the New Tax System the average tax rate paid by Australian miners is 19 per cent compared to an all-industry average of 24 per cent.

The reason that miners pay so much less tax than other companies is the very generous tax concessions that they have been granted. But the real story is much worse than the five-per-cent-tax discount they are already receiving because the 19-per-cent-tax figure includes the 'royalties' that they pay to state governments. These royalties act as a small 'price' for the minerals that the miners take from the ground.

The combination of a world price for a commodity and a wide range of production costs means that some mines make very large profits (called 'economic rents').

So how will the RSPT work?

While the administrative detail of the RSPT is likely to be quite complex, the overall concept is relatively straightforward. Any mining profits greater than six per cent (the government bond rate) will be taxed at 40 per cent, in addition to the company tax that miners already pay. The most profitable mines will pay considerable extra tax and the least profitable mines

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BOOK REVIEW

Howard Pender reviews *Slow Death by Rubber Duck: How the toxic chemistry of everyday life affects our health*, by Rick Smith and Bruce Lowrie, University of Queensland Press, 2009.

When I was 15, I was a regular 'community service visitor' to the geriatric ward of the local hospital. One Sunday morning before my 'shift' began, I ordered a vanilla-flavoured milkshake at the hospital canteen. I took the first sip and, in a violent reflex, spat out the entire mouthful. I took the milkshake back to the counter and was told, 'There's no refund on milkshakes you don't like'. I remonstrated. The manager came over. Eventually, I convinced her to take a sip. She also spat it out violently. After some investigation, the problem became apparent. The hospital canteen stored heavy-grade disinfectant in an unlabelled container identical to those used for the milkshake flavours.

Slow Death by Rubber Duck: How the toxic chemistry of everyday life affects our health by Rick Smith and Bruce Lowrie is about a suite of poisons commonly encountered in modern life, which you can't tell you're ingesting/absorbing and for which there is no 'tastes disgusting!' reflex response.

Chapters deal with: phthalates in children's toys and personal care products; Teflon and its relatives in food packaging, cosmetics and clothing; brominated flame retardants in furniture, mercury in fish and lighting, anti-bacterials in clothing, cleaning products and cosmetics; pesticides in food and gardens, and Bisphenol A in plastics and the linings of tinned-food cans.

Each chapter contains an account of the levels of the particular poison in the authors' own blood, their attempts to manipulate that level and a history of North American regulatory response to each family of chemicals.

The book focuses on the pervasive reach of these poisons. 'One of the defining characteristics of most humans on earth now includes measurable (blood serum) levels of (poly) brominated diphenyl ether, #153 ...' (p.118), a PBDE. PBDEs are members of a family that includes now-banned PCBs and PBBs. They are endocrine disruptors stored in fat tissue.

Most of the book is an illustration of three theses. The first thesis is that public regulation of the chemical manufacturing industries is inadequate. 'Cattlegate' in Michigan (p. 104) is a good example. A simple labelling mix-up, much like the one I described at my local hospital, saw carcinogenic brominated flame retardants (PBBs) enter the food chain in Michigan. Thousands of farm animals, millions of chickens and tonnes of food had to be destroyed.

Eventually, the company involved paid \$38.5m towards a clean-up, which cost the state of Michigan hundreds of millions of dollars. 'Five years after the incident 97% of state residents still had measurable levels of the chemical in their bodies' (p. 106). Stories like this are quite familiar to any student of the nuclear-power industry or avid watcher of the TV show *Air Crash Investigations*, where a concatenation of individually minor 'process failures' results in catastrophe. They also illustrate the inadequacy of Tort law as a way of dealing with poisons whose effects are poorly visible, irreversible, chronic, long term and statistical.

The second, more worrying, thesis is that deliberate attempts to mislead the public and engineer public policy in pursuit of private profit are common. The authors describe a US civil case in which Dupont settled for an estimated \$340m where it had systematically failed to disclose its knowledge of the carcinogenic impact of a Teflon family member that was polluting the water supply of a town, home to many of its employees (p. 82). The authors quote Monsanto staff as making a very explicit decision to 'play for time' to avoid financial loss in regard to the phase out of PCBs (p. 120). These accounts are more worrying than the first thesis because they point to a fundamental flaw in our approach to regulation. In numerous cases, the authors describe how the chemical companies act as socially dysfunctional, 'externality homing' delinquents. They are in a continual search for ways to make money without having to pay the external environmental and consequent health costs they impose on society. Our bodies are their sinks.

The third thesis of the book concerns the widespread scale of the problem. Although the book contains a chapter with detox instructions for individual consumers, it also concludes: 'The sources of the contamination are so numerous that no precaution taken by an individual will work completely' (p. 256). Improved government regulation and oversight of toxic chemicals are necessary.

I walked away from my milkshake experience thinking, 'If you can't trust a hospital to be careful about poisons who can you trust?' One answer stands out from *Slow Death by Rubber Duck*—certainly not corporations motivated by profit and constrained primarily by Tort law.

Howard Pender
Australian Ethical Investment Ltd

A number of short videos on the broader issues of corporate social responsibility, produced as part of a film prize competition sponsored by Documentary Australia Foundation and Australian Ethical Investment, can be viewed at: <http://www.australianethical.com.au/news/winners-mini-documentary-film-competition>.

will pay no additional tax.

While the RSPT ensures that the government will take 40 per cent of any 'super profits', one of the most confusing and least discussed features of the new tax is that the government will also be reimbursing mining companies for 40 per cent of any losses. It is this symmetry between the government's benefits from any profits and its costs associated with any losses that have led some commentators, not unfairly, to describe the RSPT as a form of partial nationalisation of the mining industry. That is, while the government would play no role in the decision-making of the miners, it would be acting as a silent partner exposed not only to profits but to losses as well.

Do we need one?

There is no doubt that the government needs to reform taxation of the mining industry. Australian citizens are the actual owners of the country's natural resources but, under current arrangements, they are the only ones who do not benefit from the rising world price of raw materials. It is important to note that it is the Saudi people who profit most from high world prices for oil, not the foreign oil companies that simply extract the oil from the ground.

Australia is not the first country to propose a super profits tax for its resources industry. Although the RSPT is a relatively novel design, the miners would be no less angry if the government had introduced a more traditional 'windfall profits tax'. The public fight will be around the detail, but the real passion derives from the underlying intention to take billions of dollars from the wealthiest mining companies and spread it out around the broader economy.

There is no doubt that the government needs to reform taxation of the mining industry.

Speaking of which, it is important to note that the last mining boom delivered very little for those who did not work in the mining industry or own a large bundle of mining shares. As was detailed in the Institute's paper, *The benefits of the mining boom: Where did they go?*, the main impacts of the last mining boom were to:

- increase the exchange rate significantly (which made it virtually impossible for domestic manufacturing industries to compete)
- drive up interest rates (reducing the disposable income of

households with mortgages).

Norway has taken the concept of the RSPT one step further. As well as imposing additional taxes on the companies that profit from their oil reserves, the Norwegians have created a sovereign wealth fund to ensure that future generations benefit from the proceeds of finite natural resources, not just the generation that was lucky enough to be around when the oil was extracted and burned. By investing the majority of their fund overseas, the Norwegians have also helped to keep their exchange rate down, which in turn has helped to ensure that their manufacturing industries do not suffer the same fate as Australia's did during the previous mining boom.

Is it good for the environment?

No. Much of the commentary surrounding the RSPT seems to imply that because it is a tax on our mining companies, it must somehow be a win for the environment too. Unfortunately, this isn't the case. While it is both equitable and efficient to extract more tax revenue from the miners, the tax has not been designed to actually reduce the amount of mining taking place. Indeed, the government's modelling suggests that, if anything, there will be a small increase in the amount of mining undertaken.

The economics of mining are about as far away from the economics of 'perfect competition' as you can get.

To date, the government has shown a strong willingness to confront the miners over the need to 'pay their fair share', but it must be said that they showed no such willingness on the issue of climate change. Both in the setting of proposed emission reduction targets and in the provision of compensation, it was clear that the government was not willing to take on the big polluters in the way that they now seem willing to confront the miners. §



Framing human rights

Fr Frank Brennan comments on the Australian Government's decision not to include a legislative Charter of Rights in its human rights framework. Fr Frank Brennan SJ AO is the Chair of the National Human Rights Consultation Committee.

When the Rudd Government announced its Human Rights Framework in response to the National Human Rights Consultation, I described it as a welcome though incomplete addition to protection of human rights in Australia. Many human rights activists have been very despairing about the government's response. I am more sanguine. Let me explain.

Our report contained 31 recommendations, 17 of which did not relate to a Human Rights Act. We knew from the beginning that it would be a big ask for a Rudd-style government to propose a Human Rights Act. After all, the Coalition was implacably opposed, the government does not control the Senate, and the Labor Party is split on the issue with some of its old war-horses like Bob Carr being relentless in their condemnation of any enhanced judicial review of politicians. Even though most people who participated in the consultation wanted a Human Rights Act and, more to the point, even though the majority of Australians randomly and objectively polled and quizzed favoured an Act, no major political party in the country is yet willing to relinquish unreviewable power in the name of human rights protection. So the 14 recommendations relating only to a Human Rights Act were put to one side.

This does not mean that the government has closed the door on further judicial reviews of legislation and policies contrary to human rights. Deciding not to open the door within a defined doorway (a Human Rights Act), the government has just left the door swinging. How so?

In accordance with our Recom-



mendation 17, the government is putting in place a rights framework, which operates on the assumption that the human rights listed in the seven key international human rights instruments signed voluntarily by Australia (including the International Covenant on Economic, Social and Cultural Rights) will be protected and promoted.

Many human rights activists have been very despairing about the government's response to the National Human Rights Consultation.

In accordance with recommendations 6 and 7, parliament will legislate to ensure that each new Bill introduced to parliament, as well as delegated legislation subject to disallowance, is accompanied by a statement of compatibility attesting the extent to which it is compatible with the seven UN human rights treaties. Also, parliament will legislate to establish a parliamentary Joint Committee on Human Rights to scrutinise legislation for compliance with the UN instruments.

So the executive and the legislature cannot escape the dialogue about the legislation's compliance with UN human rights standards. Neither can the courts, because parliament has already legislated that 'in the interpretation of a provision of an Act, if any material not forming part of the Act is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material'. Parliament has provided that 'the material that may be considered in the interpretation of a provision of an Act' includes 'any relevant report of a committee of the Parliament' as well as 'any relevant document, that was laid before, or furnished to the members of, either House of the Parliament by a Minister before the time when the provision was enacted'.

When interpreting new legislation impacting on human rights in the light of these relevant documents from the executive and from the parliament, the courts will assuredly follow the course articulated by Chief Justice Murray Gleeson in one of the more controversial

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Missing out

Many Australians who qualify for welfare assistance from government are missing out because they are not aware of what is available, find that the system is too complex or feel stigmatised because of their need. David Baker examines this government failure and suggests some solutions.



To ensure a level of social equity, or social inclusion to give it its current terminology, the government offers a range of assistance payments and concession benefits to help people who experience significant life-changing events or difficult circumstances to participate in society. Generally this assistance is provided through Centrelink.

While the government determines the qualifying criteria for the welfare it offers, it considers that actually claiming the assistance is the responsibility of individuals. Centrelink states that: 'It is your responsibility to decide if you wish to apply for a payment and to make the application, having regard to your particular circumstances'.

This burden of responsibility means that some people are missing out on assistance for which they are qualified because of barriers such as a lack of awareness about available welfare, complexity and stigma.

The government has previously reported that 1.3 million Australians are being excluded from the

benefits that are intended to help them make their way in the world. Although aware of the issue, it has done little to address this shortfall in the provision of assistance to Australians deemed to be in need of support.

An analysis of just four Centrelink payments, the Parenting Payment, the Carer Allowance, the Disability

The burden of personal responsibility imposed by the government means that some people are missing out on the assistance for which they are qualified because of barriers such as a lack of awareness about available welfare, complexity and stigma.

Support Pension and the Bereavement Allowance, revealed that in 2008, more than 168,000 Australians missed out on government assistance estimated to be worth \$623.8 million. The main reasons appear to be the low levels of awareness about the types of assistance and concession benefits that are available and the complexity of accessing this help.

Research shows that people are excluded because of the difficulty they experience informing them-

selves about the assistance that is available and lack confidence in their own knowledge. Finding out about the availability of entitlements and understanding the complexity of long forms and eligibility criteria can present hurdles to the very people who have the most to gain from assistance and broader social participation. Thus, more needs to be done to raise the public's awareness of and simplify its access to the help that government offers.

The stigma felt by many concession-card holders has also been found to dissuade those with the most to benefit from accessing support. Fourteen per cent of low-income households reported that they deliberately do not use their concession card and 26 per cent reported that they 'don't like' to use their card or are 'embarrassed' to use it. This is a second area the government needs to address as part of its social inclusion policy platform.

Overseas, means testing is widely cited as a factor in people choosing not to claim government assistance. When the time and effort required to learn about and apply for assistance is greater than the perceived value of the assistance that might result, especially as applicants approach the cut-off point for payment, the theory is that people just don't bother. However, the finding in the *Missing out* report is that means testing, widely used in Australia, is not a significant deterrent, although many people well



within the permitted income and asset ranges still miss out.

We regularly hear in the media about the scourge of welfare fraud, but we seldom hear about what the government is doing to find those people who do not receive the assistance to which they are entitled. And while the Australian Taxation Office is obliged to pursue people for minor amounts of unpaid tax, there is no obligation for Centrelink to make an effort to find the people who are not receiving their appropriate welfare. If the government is to realise its social inclusion agenda and if society is to be confident that those most in need of support are receiving it, it is essential that available assistance and concession benefits reach the people for whom they are intended.

The report outlines policy options available to government to ensure

that those in need are not excluded from their entitlements. It proposes three possible avenues addressing the issues of awareness, complexity and stigma, issues identified as contributing to the failure of people to access the welfare to which they are entitled. The avenues are:

1. A reporting mechanism that estimates both the number of eligible people who do not receive assistance and the reasons why in order to facilitate the development of a simplified process for delivering assistance.
2. Use of existing data-matching processes to check that all those who qualify for assistance have been assessed. Data matching could be used to support front-line organisations advising people on their entitlements and would enable

the generation of pre-filled claim forms to simplify the claim process. Pre-filled forms could also be sent to prospective claimants who have been identified as not receiving the assistance for which they appear to qualify.

3. Representation for welfare recipients similar to the role played by Fair Work Australia for employees. An Entitlements Commission would fill this role, with responsibility for ensuring that marginalised members of society are not further marginalised because they are simply not aware of the government assistance available to them, find the claims process too complex or are deterred from claiming their entitlements due to stigmatisation. §

Framing human rights continued from Page 5

refugee cases of the Howard era. Gleeson said, '[W]here legislation has been enacted pursuant to, or in contemplation of, the assumption of international obligations under

will rarely be sufficient for that purpose'.

So even though there will be no Human Rights Act, the courts are now to be drawn into the dialogue

a person aggrieved by most decisions made under federal laws to apply to a federal court for an order to review on various grounds, including that the decision maker failed to take into account a relevant consideration'. Retired Federal Court Judge Ron Merkel, in his submission to our inquiry, pointed out that the High Court has already 'recognized the existence of a requirement to treat Australia's international treaty obligations as relevant considerations and, absent statutory or executive indications to the contrary, administrative decision makers are expected to act conformably with Australia's international treaty obligations'.

Ultimately, Australia will require a Human Rights Act to set workable limits on how far ajar the door of human rights protection should be opened by the judges in dialogue with the politicians.

a treaty or international convention, in cases of ambiguity a court should favour a construction which accords with Australia's obligations'. He added, '[C]ourts do not impute to the legislature an intention to abrogate or curtail fundamental rights or freedoms unless such an intention is clearly manifested by unmistakable and unambiguous language. General words

with the executive and the parliament about the justifiable limits of all future Commonwealth legislation in the light of the international human rights obligations set down in the seven key UN instruments.

That's not all. The government's human rights framework notes that 'the *Administrative Decisions (Judicial Review) Act 1977* enables

Ultimately, Australia will require a Human Rights Act to set workable limits on how far ajar the door of

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'The graveyard of empires'

Kellie Tranter, a lawyer, writer and immediate past chairperson of the Standing Committee on Legislation for BPW International, comments on the conflict in Afghanistan, and describes a war of ignorance, suffering and spin.

'I am involved in a land of leonine and brave people ... You have brought only one son into the world, but everyone in this land can be called Alexander.' (Alexander the Great in a letter to his mother describing his encounters in Bactria (Afghanistan), 4th century BC).

For millennia, Afghanistan has played host to unwinnable wars, including ours. Yet we still haven't learned our lesson from the Soviets or the British or Genghis Khan or Alexander the Great.

Afghanistan is a state in name only. In an area with no fixed borders, no obvious frontiers, difficult terrain and logistics and friendly neighbours, no sophisticated army has ever succeeded against Afghanistan's patient resistance movement that is mobile and blends back into the population when the need arises. Modern warfare can't defeat the poor but proud people of the countryside who see the government as the opposing side in a civil war and foreign invaders as an intrusion into their lives.

In a war with so many private interests at stake, the only people whose interests are best served by ending it are the impoverished men, women and children of Afghanistan.

For close to a decade, Western political leaders have demonstrated their ignorance of Afghanistan's society and culture. Pashtunwali, an ancient code of life, is as foreign to our leaders as the country itself. They don't appear to understand why Afghanistan has become known as 'the graveyard of empires'.

The Afghanistan Compact, agreed upon at the London Conference on Afghanistan in 2006, demonstrates that the leaders of the countries involved are either unrealistically naive or alternatively deceptive. If po-

litical leaders maintain the foolish belief that Afghanistan can become a 'purpose designed and built' democracy, historians will be mulling over the failure of America and its allies for generations to come.

As with many wars, the reasons given publicly to support it don't reflect the private intentions behind waging it. There are many agendas at play in Afghanistan and everyone, it seems, wants a piece of the action. Consider the following complex geopolitical interests:

- the proposed TAPI pipeline and the 2008 Gas Pipeline Framework Agreement
- the debt-cancellation program in return for 'economic reforms'
- a lawless paramilitary
- widespread corruption on all sides, combined with unmanaged and uncoordinated aid money boosting corporate profits or being spent on 'consultancy fees'
- the banksters and marketeers

circling while the Afghanistan National Development Strategy, which depends on achieving a sustained high rate of economic growth that will increasingly be based on private-sector-led development, is rolled out

- rumoured proxy wars between India and Pakistan on the one hand, and the United States and Iran on the other
- the payment of 'aid' to buy support for an unpopular war from smaller nations, and even the smaller gun runners who are making a tidy profit.

In a war with so many private interests at stake, the only people whose interests are best served by ending it are the impoverished men, women and children of Afghanistan. But their suffering is peripheral to the central business of war. War becomes interminable when it is used as a rationale for peace.

In Australia, we suffocate in political silence. Whipped-up nationalistic sentiments combined with a



dehumanised enemy and scant information, forestall most attempts to challenge our government's crude assurances and assessments. Government misinformation goes unchecked. Engineered inhumanity means we see Afghanistan through the eyes of the occupying power rather than through the human eyes of those who have been invaded. Introspection is a dirty word.

For example, since we joined the initial invasion almost 10 years ago, there has been no substantial parliamentary debate about the war and our involvement in it, nor any proper examination of the war's legitimacy, although the total cost of 'defence' operations in Afghanistan since 2001 stands at \$6.1 billion.

Then consider Australia's total commitment to aid for Afghanistan: \$650 million so far. Notwithstanding the country's notorious insidious corruption, no information is available about any audit activities for aid expenditure in Afghanistan and there hasn't been a Senate inquiry about aid since the invasion in 2001.

In fact, at a Supplementary Estimates hearing held late last year, it was revealed that from 2001 to



2005 AusAID's online databases cannot ascribe Official Development Assistance (ODA) and ODA-eligible funding flows to a particular receiving agency/organisation. From 2005 to 2009, the external agencies/organisations to which AusAID's ODA funding has flowed can be identified, but information on individual recipients has not been collected for ODA-eligible funding provided by other Australian Government departments and agencies.

Aid given to Afghanistan without the necessary complementary aid to the North-West Frontier Province and Baluchistan is futile. That may help to explain why aid to Afghani-

stan seems to be cobbled together with aid to Pakistan. Why would Australia give the Asian Development Bank, which coincidentally is funding the proposed TAPI pipeline, \$915,049 for Afghanistan but \$19,934,953 for Pakistan (2005–2009)? If Australia is truly serious about improving the lot of Afghan women by reducing maternal mortality rates, why only \$2,126 to the Birthing Kit Foundation (Australia)?

The government also needs to ensure that the money (\$4,322,559) given to The Asia Foundation (set up in 1951 and covertly funded for many years by the CIA), has not become 'phantom aid' as was reported by the Atlantic Free Press in January this year.

If the United States and its allies expect that Afghans living beyond urban areas will strike a grand bargain to permit permanent military bases, or the construction of a pipeline, or a 'friendly' centralised government that will open the country up to the international privateers, they'd better think again. The historical reality is that if the war continues, the United States will be the next empire in the graveyard, and if Australia doesn't get out of Afghanistan, it will be buried alongside it. §

Framing human rights continued from Page 7

human rights protection should be opened by the judges in dialogue with the politicians.

We will have a few years now of the door flapping in the breeze as the public servants decide how much content to put in the statements of compatibility, as the parliamentarians decide how much public transparency to accord the new committee processes, and as the judges feel their way interpreting all laws consistent with the parliament's intention that all laws be in harmony with Australia's international obligations, including the UN human rights instruments, unless expressly stated to the contrary. There is no turning back from the federal dialogue model of human rights protection. §

Thank you

The Australia Institute would like to offer a special thanks to all our monthly donors. This is a wonderful way to support the Institute and we are very pleased to see that that numbers of people making recurring donations are creeping up and becoming quite substantial.

We would like to urge all those who can to donate in this way to help us fund our Measuring what Matters initiative. Anything you are in a position to give, we are in a position to spend—on more and more research.

We have now published the first paper to come out of the Measuring what Matters project and are busy getting the second survey ready to go out. Over time, we are hoping to build up a substantial body of data to help us measure genuine economic progress and wellbeing in Australia. At the Institute we are very excited about this project and intend it to become an important and influential indicator in Australia.

On the trading block

Dr Patricia Ranald, the convenor of the Australian Fair Trade and Investment Network, examines the ongoing negotiations for a Trans-Pacific Partnership Agreement, which have resurrected all of the issues debated in the Australia-US Free Trade Agreement of 2003–04.

The Australian Government has begun negotiations for a Trans-Pacific Partnership Agreement (TPPA) with the US, Chile, Peru, Brunei, Singapore, New Zealand and Vietnam to develop a multilateral agreement based on the bilateral agreements the US has with four of these countries. This resurrects all of the issues that were debated in the Australia-US Free Trade Agreement (AUSFTA).

The Howard Government negotiated the AUSFTA in 2003–04. The US Government and companies identified Australian policies as barriers to trade, including price controls on medicines under the Pharmaceutical Benefits Scheme (PBS), labelling of genetically engineered (GE) food, and Australian media content.

The US Government also wanted an investor-state dispute process, which would have given US companies the right to sue Australian governments for damages if laws or policies harmed their investments, even if the laws were in the public interest.

There was strong community opposition, which had some impact. The final agreement had no investor-state dispute process, no changes to GE food labelling, and limited changes to the PBS and local media content.

The TPPA means that all of these issues will be on the table again. US business groups have made submissions for changes to all of the Australian policies listed above, and they want an investor-state dispute process in the agreement. See: <http://www.regulations.gov/search/Regs/home.html#docketDetail?R=USTR-2009-0041>.

US pharmaceutical companies argue that the PBS prevents them from enjoying the full benefits of their intellectual property rights by comparing the wholesale prices of new drugs with cheaper generic drugs.

The Pharmaceutical Benefits Scheme

In the US, the wholesale prices of common prescription medicines are three to ten times the prices paid in Australia. Under the PBS, health experts compare the price and effectiveness of new medicines with the price and effectiveness of generic medicines, resulting in lower wholesale prices. The listed

intellectual property rights by comparing the wholesale prices of new drugs with cheaper generic drugs. The strong community campaign helped to retain the PBS pricing system.

But the AUSFTA set up a joint US-Australian group to discuss medicines policy. In 2007, the Howard Government made changes to the policy by creating a new F1 category for medicines that are supposed to have unique health benefits, thus enabling pharmaceutical companies to receive higher wholesale prices for some medicines.



medicines are then made available for sale at subsidised retail prices, currently \$5.30 for pensioners and other low-income groups and \$33.30 for others. The difference between the wholesale price and the subsidised retail price is the cost of the PBS to taxpayers.

Pharmaceutical companies argued that the PBS prevented them from enjoying the full benefits of their

Medical studies published in 2010 show that the higher-priced F1 medicines are a growing share of the PBS budget, without adequate evidence that they have better health effects. A government review of PBS costs published in February 2010 confirmed this trend. (See Tom Faunce et al., 'The Impact of the Australia-US Free Trade Agreement on Australian medicines regulation and prices', *Journal of Generic Medicines*, 7:1, pp. 18–29, January 2010; Philip Clarke and Edmund Fitzgerald, 'Expiry of patent protection on statins: effects on pharmaceutical expenditure in Australia', *Medical Journal of Australia*, 27 April, 2010, p. 8, found at www.mja.com.au/public/issues/192_11_070610/cla11057_fm.html; Department of Health and Ageing, *The Impact of PBS Reform*, Report to Parliament on the *National Health Amendment (Pharmaceutical Benefits Scheme)*



Act 2007, Commonwealth of Australia, 2010, p. 15.) The 2010 Budget included some measures to limit the F1 category and contain these costs.

The TPPA provides another opportunity for the pharmaceutical industry to demand changes that would lock in the F1 category's higher prices. The Australian Government should stand firm against these demands.

No investor-state dispute process

All trade agreements contain state-to-state dispute processes to resolve conflicts about the agreements. Investor-state dispute processes give international companies extra rights to challenge laws and sue governments for damages if they believe their investments have been harmed. These disputes are heard by trade tribunals that give priority to the interests of the investor rather than to the public interest.

Under the investor-state dispute process in the North American Free Trade Agreement (NAFTA), corporations have challenged health and environmental laws and sued governments for millions of dollars. (See Kyla Tienhaara, *The Expropriation of Environmental Governance: Protecting Foreign Investors at the Expense of Public Policy*, Cambridge University Press, 2009.)

This undermines the democratic process and discourages govern-

ments from raising standards of public regulation. Fifty-nine cases have been launched since 2004. Even when they do not succeed, they involve governments in years of expensive litigation.

A recent example from a bilateral investment treaty based on the NAFTA principles has direct implications for Australia. Philip Morris International sued the Uruguay Government in February 2010, challenging laws restricting tobacco advertising. (See International Centre for Trade and Sustainable Development, 'Tobacco company files claim against Uruguay over labelling laws', *Bridges Weekly Trade News Digest* 14:9, 10 March 2010, found at <http://ictsd.org/i/news/bridgesweekly/71988/>.)

The Australian Government announced in April 2010 that it would introduce similar legislation. Philip Morris immediately threatened legal action, claiming that the legislation would violate Australia's international trade obligations, including the AUSFTA. (See Philip Morris spokesperson quoted in Nick O'Malley, 'Hard sell in a dark market', *Sydney Morning Herald*, 24 April 2010, features, p. 1.)

The current AUSFTA does not have an investor-state dispute process, so this is an empty threat. But if the government agrees to such a process as part of the TPPA, it would hand the tobacco companies the weapon to sue it for millions of dollars of damages. US firms could

also use the process to challenge laws on the PBS and other policies.

Australian Government position

The danger is that these policies will be traded off in the hope of greater access to US markets, which the AUSFTA failed to achieve. Trade Minister Simon Crean has said on the one hand that 'everything is on the table', and on the other hand that there will not be a 're-opening of obligations in relation to the Pharmaceutical Benefits Scheme'. He also said that the government has 'serious reservations about the inclusion of investor-state dispute settlement provision in this agreement'. (Letter to *The Canberra Times*, 17 March 2010.)

Community Response

Over 30 organisations, including unions, church, environment, health, pensioner and other community groups have asked the government to reject an investor-state dispute process and to reject any changes to the PBS, labelling of GE food, local media content and other policies. They also want any agreement to include strong labour and environmental standards. §

For the full statement and further information on this campaign see www.aftinet.org.au



If the Australian Government agrees to an investor-state dispute process as part of the TPPA, it will hand companies the weapon to sue it for millions of dollars of damages and US firms could use the process to challenge laws on the PBS and other policies.

Measuring what matters

Much of the data gathered by the Australian Bureau of Statistics measures trends and statistics that were meaningful last century but do not include some of the issues that have become important in the new century. Richard Denniss wants to fill some of the gaps and explains how he intends to do this.

'There is nothing new to be discovered in physics now. All that remains is more and more precise measurement.' So, reportedly, said Lord Kelvin in 1900.

While no social scientist has explicitly expressed the same sentiment, a quick look at the website of the Australian Bureau of Statistics (ABS) will reveal that the numbers we use to define and measure ourselves are as stuck in the past as any white picket fence. In May 2010, for example, the ABS published data on:

- stocks of grain held by bulk handling companies and grain traders in Australia
- pre-mixed concrete production
- international merchandise imports in Australia.

Not only is such incredibly detailed economic data available, it is available on a monthly basis. Of course, not all industries are blessed with such timely data. The wine industry, for example, has to make do with quarterly instalments of figures for the shipments of wine and brandy in Australia by Australian wine-makers and importers.

When it comes to the environment, however, citizens have to manage with much less diverse and less timely data. For example, while the ABS did release its *Australia's Environment: Issues and Trends* in February 2010, the section on biodiversity relied on data from 2006.

It is, of course, not the fault of the ABS that the focus of its data collection is on the industry statistics that were important 20 years ago rather than on the social and economic problems considered important today. Indeed, it is fair to say that the ABS appears to have done an admirable job of broadening its publications to encompass the growing community interest in social and environmental issues. The problem is not the breadth of the current offerings but their depth. Without a significant investment of new funding, the ABS cannot be expected to monitor biodiversity as closely as it monitors concrete production.

The Australia Institute was motivated to begin our 'Measuring What Matters' project in order to help fill some of the gaps in the existing ABS offerings and, while our small resources are a constraint, we are confident that we can make a big difference. Our first batch of data included information on the difficulties that people have when trying to see a doctor at a time that suits them. The results, published by the Institute in a paper entitled *Measuring what Matters: Do Australians have good access to primary health care?*, helped the Nurses Federation to convince the government to make a big new investment in nurse practitioners.

Soon, we will begin publishing regular indicators that look at how Australians access their health system, the suitability of their hours of work and whether they feel lonely or socially connected. We think these data will help individuals, and the organisations that represent them, make a stronger case for better policies and better outcomes.

In the long run, however, we hope that in leading by example we will show governments how interesting, important and useful such data are for those interested in improving the lives of ordinary Australians.

While we are starting off small, when it comes to the Measuring What Matters project we are thinking big. So if you haven't done so already, please complete the survey on our website, www.tai.org.au, to tell us which systems you think most need measuring and the best way to go about measuring them.



Crude awakening

There is consensus that eventually the world will experience peak oil, the point at which production is optimised and after which there will be inevitable decline. David Ingles, in his paper *Running on empty? The peak oil debate* examines the precept and makes some suggestions for addressing the issues. A summary of his paper follows.

Like climate change, the possibility of peak oil poses an uncomfortable challenge to citizens and governments alike in the 21st century. 'Peak oil' is the term first used by M K Hubbert in the 1950s to describe the point in time at which the world-wide production of crude oil extraction will be maximised. But while it is inevitable that production will peak at some point, it is uncertain when that point will be reached.

Peak oil concerns exploded during the rapid escalation of oil prices prior to the 2007 global financial crisis (GFC), and resurfaced recently when oil prices appeared to resume their upward trend. These concerns have been underscored by official bodies such as the International Energy Agency (IEA) warning of a possible 'supply crunch' brought about by a lack of new investment following the GFC.

What will happen when oil runs out, or merely becomes difficult and very expensive to procure?

World oil field discoveries (as distinct from the amount of oil extracted) peaked in the 1960s at around 55 Gigabarrels (Gb) a year, but fewer than 10 Gb a year have been discovered between 2002 and 2007. Current demand is 31 Gb a year. According to official estimates, around 40 to 75 years of supply remains at existing usage rates but much fewer if demand continues to grow. Although usage has more or less stabilised in developed western countries, the rapid economic growth of populous nations such as China and India is creating significant upward pres-



sure on the demand for oil products.

There is not much disagreement about the concept of peak oil, but there is fierce debate about how near the world is to the peak and what, if anything, should be done about it. In fact, a substantial amount of oil remains in the earth and peak-oil doomsayers have often been proved wrong in the past. But this is not a reason for complacency. Oil is a precious resource; there is a finite supply in the earth and there is no reason at all to use it wastefully. Moreover, as the IEA has argued, the world is currently embarked on a fossil-fuel future that is patently unsustainable from an environmental perspective, quite apart from the fact that rates of extraction will exhaust fossil-fuel resources far too quickly, thus ignoring the needs of future generations.

World economies are built on oil. The question is what will happen when it runs out, or merely becomes difficult and very expensive to procure. The probable answer is not an acceptable one. As occurred in response to the OPEC oil shock of the 1970s, skyrocketing oil prices are likely to result in severe disruption to economies, with central banks raising interest rates to slow runaway inflation, people out of work, famine, hunger and serious civil unrest. It is a scenario that governments and their constituents should be attempting to avoid at all costs but so far very little has been done to prepare for or contend with the eventuality.

Perhaps the first step is for governments to recognise that there is a potential problem and to begin to plan for it. Not only will this cushion

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Crude awakening from Page 13

the impact if it does occur, but many of the solutions to peak oil are also advantageous in the fight against climate change, thereby doubling the benefit of remedial measures. The paper outlines some of the policy options available to the Australian Government to assist in addressing the contingencies that are already confronting the country as a result of increasing oil prices and a rising population.

From an international perspective, the paper argues that the important immediate steps are for countries to stop subsidising liquid fuels, and for the US to cease its profligate consumption, a result of very low fuel taxes. But countries like Australia, while small in terms of their contribution to demand, also have a role to play, and fuel- and road-pricing regimes need to be altered to encourage fuel efficiency. Moreover, the sustainability of the current low-density urban model, itself

a reflection of the US situation, needs to be re-evaluated.

Finally, some of the alternatives to conventional oil are becoming economic at current prices, and might offer a way around the looming predicament occasioned by the finite supply of the resource. But it must be recognised that they involve extremely high and possibly unsustainable costs in terms of greenhouse gas emissions, for example the extraction of oil from tar sands or its processing from coal and natural gas. This poses a potential dilemma for policy, but the answer is actually quite simple—a price on carbon.

The paper suggests that a carbon tax rather than a trading system is the optimal method for pricing carbon, but ultimately the method is not as important as the existence of a price that is relatively uniform across countries and is sufficiently high to materially affect production and consumption decisions, par-

ticularly the decision as to whether or not to pursue the development of emission-intensive alternatives to oil. In the medium term, the circumstances created by a price on carbon will likely expand the use of natural gas, both for power generation and transport; in the long term, it is likely to expand the role of electric vehicles and non-fossil forms of power generation.

The important immediate steps are for countries to stop subsidising liquid fuels, and for the US to cease its profligate consumption.

As with climate change, the most cost-effective response to the inevitable but uncertain timing of peak oil is to invest in early adaptation. It will be impossible to redesign cities, switch the vehicle fleet to new forms of fuel and transform the location decisions of producers in a timely manner after the oil supply has peaked. Early investment in adaptation measures will pay high dividends in the future, whether in response to peak oil, climate change or simply better city design and reduced congestion on roads.

The paper concludes by suggesting that the peak oil issue is sufficiently important for regular official re-assessments of the situation to be designed and implemented. If mitigation actions are not planned in advance, the alternative may be for a future where periodic price spikes and shortages affect the nation's ability to manage the economic cycle by causing the re-emergence of 'stop-start' economic conditions such as those experienced in the 1970s. §



Institute out and about

- Richard Denniss was invited to Dapto to launch the Illawarra Forum's *Practising Social Justice* report, which examined the role of locally-based community organisations and their contribution to the wellbeing of local people and inclusive communities
- David Baker was joined by Anglicare Australia's Executive Director Kasy Chambers and UnitingCare Australia's National Director Susan Helyar to launch his paper *Missing out: Unclaimed government assistance and concession benefits* at Parliament House
- Richard discussed the economic and political challenges associated with tackling climate change at the Australian National University's Emeritus Faculty

Politics in the Pub

The Institute has hosted four Politics in the Pub evenings in Canberra.

1. Ian Fry, who represented Tuvalu in the Copenhagen climate-change negotiations, discussed 'Did Copenhagen sink Tuvalu?'
2. Professor George Williams asked 'Would a Bill of Rights change your life?'
3. Richard Denniss explored the topic 'Greenwash: Has tax reform and the Budget sold the environment short?'
4. Don Russell, former adviser to Paul Keating and Ambassador to the US, discussed whether the US is in decline and 'Is it time to reconsider our relationship with America?'

Note: These talks will all be available on the Institute's website soon.

Institute in the news

- Research Fellow David Ingles was part of a panel discussion on *Australia Talks* about congestion charging
- Senior Research Fellow David Richardson's work on excessive bank profits gained a lot of radio attention and was used as part of *The Daily Telegraph's* national survey, Banks vs Battlers
- Research Fellow David Baker highlighted the number of Australians missing out on government assistance on *Life Matters*

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Institute news

New publications

- D Baker and R Denniss, *Reining it in: executive pay in Australia*, Policy Brief 9, January 2010.
- D Richardson, *A licence to print money: bank profits in Australia*, Policy Brief 10, March 2010.
- H Bambrick, R Woodruff and I Hanigan, *Effective emissions targets needed to protect Australia's blood supply*, Policy Brief 11, March 2010.
- A Macintosh, *Reducing emissions from deforestation and forest degradation in developing countries: A cautionary tale from Australia*, Policy Brief 12, April 2010.
- R Denniss and J Fear, *Measuring what matters: do Australians have good access to primary health care?* Policy Brief 13, May 2010.
- A Macintosh, *REDD: reducing emissions from deforestation and forest degradation (REDD) in developing countries*, Institute Paper 4, (to be published).

Opinion pieces

- R Denniss, 'Rudd should never have tied carbon cuts to Copenhagen', opinion piece, *The Australian*, 7 January 2010.
- D Baker, 'The great big pay disparity', opinion piece, *Online Opinion*, 18 January 2010.
- R Denniss, 'Wayne Swan fiddling as climate burns a budget black hole?' opinion piece, *Crikey*, 5 February 2010.
- R Denniss, 'Dealing with the Senate's climate impasse', opinion piece, *Inside Story*, 9 February 2010.
- D Richardson, 'A licence to print money: bank profits in Australia', opinion piece, *Online Opinion*, 15 March 2010.
- J Fear, 'Redressing the balance for members?' opinion piece, *Australian Financial Review*, 27 March 2010.
- R Denniss, 'Time for a breath of fresh air?', opinion piece, *The Canberra Times*, 28 April 2010.
- R Denniss, 'Handicap banks to level out the field', opinion piece, *The Canberra Times*, 4 May 2010.
- R Denniss, 'Populate or perish', opinion piece, *Online Opinion*, 5 May 2010.

Stop Press

The Australia Institute is delighted to hear that one of its directors, Professor Barbara Pocock, has been recognised as a Member of the Order of Australia in the Queen's Birthday honours. Congratulations Barbara.



Research Fellow—Josh Fear

Josh Fear has been at the Institute for three years and has just been appointed Deputy Director. He is a social researcher and runs the Institute's ongoing survey program, which collects data on community attitudes and behaviour. Surveys allow the Institute to gain a picture of public sentiment on a wide variety of policy issues, and the results are regularly included in Institute publications.

In addition to managing the Institute's survey program, Josh has written on various consumer policy issues, including financial confusion, superannuation and intrusive marketing. His paper *Go Away, Please: the social and economic impact of intrusive marketing* reignited debate about the effectiveness of Australia's Do Not Call Register, while another paper, *Choosing Not to Choose: Making superannuation work by default*, has been influential in the deliberations of the current Cooper Review into Australia's super system.

Josh is also fascinated by political language, or rather the way politicians equivocate and obfuscate in their quest to toe the party line or to avoid saying anything meaningful. He wrote a chilling account of John Howard's manipulation of the English language—and the public imagination—in *Under the Radar: Dog-whistle politics in Australia*. As we creep towards an election, more and more scrutiny will be paid to the leaders' every utterance, but often the mainstream media's analysis falls woefully short. To tell the real story, Josh is hoping to write an examination of political communication under the Rudd Government.