Giving independent policy advice

(Chancellor's Lecture 2, 2011)

Mr Gary Banks AO

Michael Grigoletto, MC

To begin this evening's formalities we respectfully acknowledge the traditional owners, the people of the Kulin nation as the custodians of this land. We also pay respects to all Aboriginal community elders, past and present, who have resided in the area and have been an integral part of the history of this region.

We're delighted to see so many of you here this evening for what promises to be a fascinating and engaging lecture, so welcome again and thank you for joining us.

It's now my privilege to introduce to you Mr Bill Scales who has been Chancellor of Swinburne University of Technology since 2005. Over the past 40 years, Bill has been involved with many boards and committees in the private, government and not for profit sectors, holding a number of high profile leadership roles in both the public and private sectors. In addition to his role at Swinburne, Bill is currently Chairman of the Port of Melbourne Corporation and a Council member of the Victorian division of the Australian Institute of Company Directors. In 2008 he was a member of the panel of experts that reviewed Australia's higher education sector for the Australian government. He has held the roles of Group Manager Director of Regularity, Corporate and Human Relations at Telstra, Secretary at the Department of Premier and Cabinet in Victoria, and Chairman and CEO of the Industry Commission where he worked with tonight's guest speaker Gary Banks. He also held senior management roles in the manufacturing sector.

Bill has conducted many public enquiries for the Australian Government. Currently he's chairing a review for the Council of Australian Governments into Australia's energy sector. He is also conducting a review of funding for schools for the Federal government. Furthermore he is conducting a review of Victoria's child protection system for the State government. In 1993 Bill was made an Officer in the Order of Australia for his services to industry and in 2003 he was awarded the Centenary Medal for outstanding service to business and commerce. Ladies and gentlemen, Mr Bill Scales.

Mr Bill Scales AO

Thank you Michael. It is a great pleasure to see so many of our alumni and friends here again tonight. Thank you very much for coming and being with us. Like our other Chancellors' Lectures, I'm sure you'll find this to be a terrific occasion. This is the second Chancellor's lecture for 2011 and it's the sixth actually since we began this series of lectures in 2009. Tonight's lecture will be given by Gary Banks, Chairman of the Productivity Commission. Gary has been the Chairman of the Productivity Commission since 1998. As many of you would know, the Productivity Commission is the Australian Government's main advisory body of micro-economic matters and also many, many elements of Australia's broad public policy framework.

In addition to being the Chairman and the CEO of the Commission, Gary has personally headed for the Commission, national enquiries on wide ranging reform topics such as national competition policy, the National Reform Agenda and the economic implications of an ageing population, as well as many other key policy areas in areas such as industry assistance, infrastructure, government services and regulation. Gary also chairs the review of government service provision for the Council of Australian Governments. In 2006 he chaired the Australian Government's Regulation Taskforce. I think it's also fair to say that under Gary's stewardship, the Productivity Commission has become internationally acclaimed for the quality of its work and for its fearless contribution to Australia's public policy discourse.

It's also I think fair to say, and Gary might blush at this, but he really is one of Australia's most distinguished economists. He's worked at the Centre for International Economics in Canberra and is an Economic Consultant for the OECD and the World Bank. He served as a Senior Economist with the GATT Secretariat in Geneva and as a Visiting Fellow at the Trade Policy Research Centre in London. In 2007 Gary was made an Officer in the General Division of the Order of Australia for his services to the development of public policy in microeconomic reform and regulation. Gary's lecture tonight will focus on the importance of the independence of the Productivity Commission and about its contribution to public policy. Please welcome Gary Banks.

Gary Banks

Well thanks Bill. Thanks very much for the invitation and Linda Kristjanson, thank you very much. It's a pleasure to be here and to see this wonderful facility. Apparently although it's got all this

glass around it, everybody can still concentrate, and as I was saying earlier, it's probably pretty hard to fall asleep because someone will spot you as well. So congratulations to the university on creating such a wonderful facility.

Well during the past decade the number of reviews commissioned by governments on key policy issues appeared to have increased exponentially, however the Commission's found in its current review of reviews of regulation which will be released tomorrow morning, that some of these reviews and enquiries have done better than others in achieving improved outcomes, and to borrow a catch phrase, "Reviews ain't reviews". How well they've performed has depended not just on whether they've targeted the right issues, but crucially on their governance, their skill base and how they've gone about their tasks, especially the consultation processes.

So in this lecture I intend to focus on one aspects of governance that stood out as the success factor across a variety of these policy or regulatory reviews, namely independence. And while many reviews have been characterised as independent, in practice this has not always been accepted by stakeholders and that in itself has affected their influence. I'll speak about independence specifically in relation to the productivity commission. This is because independence is integral to the Commission's role in advising governments and informing public opinion. It's also something that as Chairman of the Commission, I frequently have cause to reflect on, as no doubt did my predecessor Bill Scales who was formerly a Chairman of the Commission and is now your Chancellor here at Swinburne University.

So there are two threshold questions. The first is "Why is independence of value in a public policy sense?", and the second one is "What does it actually require?" The simplest answer to the first question is that governments need advice that's based on a broad understanding of the public interest, otherwise the policy making arena could become dominated by self interested or ideologically based claims, and end up generating exclusively bad outcomes. Claims of that kind are of course pervasive in any democracy and it's what democracy is actually all about, and if all goes well, they should be sorted out by the political decision making process with advice from different parts of the bureaucracy and vigorous parliamentary debate ultimately securing courses of action in the national interest, and with the ballot box of course providing ultimate adjudication.

Now while the system works tolerably well overall, not perfectly, but as they say, better than any alternative we can think of, it's an empirical fact that much bad policy does nevertheless get through. And the reality is that particularly in complex policy areas or where good evidence is not readily available, self interested arguments can escape the scrutiny and checks they deserve. Parliamentary debates are often not as well informed as they might be about the choices or trade-offs and the structure and interests of government departments don't necessarily always facilitate an understanding of what's in the wider public interest. Independent advice, if it's also well researched public advice, can complement these other institutions by helping governments identify the best ways forward in complex or contentious policy areas. But it can also facilitate implementation by building public confidence that the policy is well founded and therefore likely to be generally beneficial. In other words, it can increase the trust of the wider community in circumstances where many will not have or be able to acquire a detailed understanding of the particular policies under consideration.

So what advice is independent? At bottom, independence essentially hinges on the incentives and constraints that can affect the advisor's ability to be objective and to exercise judgement based on facts and analysis without being unduly influenced by special interests or third parties. This suggests that independence is not an absolute concept. There are degrees of independence. In a formal sense, it depends on the governance arrangements around the advisor, but in a practical sense it also depends on the resourcing of advisory bodies and on the characteristics of the individuals concerned, their attitudes, their beliefs, as well as their experiences and interests. All these things affect not only how independent a particular source of advice is able to be, but also how independent it is perceived to be, and the latter can be just as important if the advice is to serve the role of enhancing public understanding and trust in the policy making process.

In terms of the governance arrangements, the minimum requirement for formal independence is that the advisory body operates at arm's length from the decision maker. The more substantive requirement is that the advisor is not able to be unduly influenced by any party, including the decision maker, and this one's much harder to satisfy. It invokes more subtle considerations of the nature of the relationship between an advisory body and policy maker, and how the entity is funded and staffed. In my view, the second requirement is really satisfied to a sufficient degree, and this deficiency in many cases has detracted from the contribution of the reviews concerned to achieving better policy outcomes.

Now I won't surprise you if I suggest that the Productivity Commission passes both tests for independence, and further, I believe that this has been fundamental to the Commission's ability to make a sustained contribution over the years. So tonight I'm going to talk briefly about those aspects of the Commission's origins, design and operation that relate to its independence, and I'll consider how that independence, together with other features, has helped public policy and then allude to some challenges associated with this. Even an independent life wasn't meant to be easy.

Well, the Commission's independence is formalised in it's statute, the *Productivity Commission Act 1998.* But key features of this legislation had their origins in the *Tariff Board Act* which goes a long way back further to 1922. The Tariff Board has a quasi-judicial role, had one in relation to its advice to government. Tariff's involve both winners and losers, and impartiality in making judgements based on the evidence was rightly seen as essential. The same rationale for independence was adopted by Sir John Crawford in his report to Gough Whitlam in 1973 on the replacement of the Tariff Board by an Industry Assistance Commission. The IAC was assigned a similar role, though with a wider remit in the conflicted area of industry assistance. It's back on the agenda. Its purpose, like the Tariff Board, was to provide evidence based impartial advice, but a crucial difference introduced into its statute, was that it was required to take an economy wide perspective. That is it must promote the interests of the community as a whole over that of any particular industry or group.

Over the years, the Commission's evolved considerably further and its work now covers much more extensive policy territory than tariffs and other industry assistance. However, the formal statutory independence that had its origins in the Tariff Board has held it in good stead. Indeed I'd argue that it has facilitated the extensions to its public policy role. Having its own statue is clearly fundamental to the Commission's independence and the most basic reason I can think of is that it makes it hard to abolish the organisation. That would require legislation to terminate the act which there would need to be reasons that got the support of both houses of parliament, and thus reasons that the public itself would broadly accept.

There are two aspects of the statute that bear on the Commission's independence; one relates to appointments and the second to the operations of the Commission, particularly its relationship with the government or minister of the day. In relation to appointments, the independence of the Productivity Commission is embodied in the commissioners and under the *Productivity Commission Act*, commissioners can be appointed for up to five years. This period has the

advantage of spanning more than one electoral cycle. Perhaps more importantly it gives commissioners job security for their term of appointment. The only grounds for removal of a commissioner are for demonstrated misbehaviour, the dimensions of which are specified or physical or mental incapacity. That means commissioners can't be sacked merely for giving unwelcome advice on public policy matters. Now that's quite significant because there's little statutory limitation on the ability of the Commission to offer such advice. Indeed, in conducting an enquiry, the Commission has licence under its statute to, and I quote, "make recommendations in the report on any matters relevant to the matter referred."

Well placing that in perspective however, the Commission has no executive power. It's not a decision maker. It's functions are merely advisory and informational. It's thus really only as influential as the quality of the advice and the information it provides which depend on the processes, the research and the analysis on which these are based. Secondly, although the Commission can undertake research in support of its other activities, it cannot initiate its own public enquiries, and the enquiries that it is asked to undertake are framed by the government and can be bounded as it sees fit. For example, our recent study on carbon abatement policies around the world, was restricted to a comparative assessment of measures in place, rather than proposing what Australia's particular policy should be. Nevertheless this still leaves the Commission with scope through its supporting research to get public attention for policy issues it sees as important. For example, the recent enquiry into aged care was preceded by a self-initiated research study identifying deficiencies in existing arrangements.

How potential conflicts of interest are handled is obviously central to the independence of the commissioners and their perceived credibility, and originally in the IAC, commissioners had to be full time appointees. This had the same rationale as for the judiciary that it would eliminate scope for conflicts that could come from other activities, particular remunerated activities. However in the Commission's case that requirement became impractical over time and currently of the 10 commissioners, apart from myself and my deputy, half are part time, and I might also note that half our commissioners are women, a few more than you had in your day Bill.

Now while this has been beneficial in enabling the Commission to draw on people with diverse skills and experience, it has obviously increased the potential for individual conflicts of interest and there are accordingly provisions in the act requiring part timers to obtain approval for

involvement in other activities, and where there's a perceived conflict, that person is quarantined from any related matter that the commissioner is looking at.

Well often the first question I'm asked when I'm talking about the Commission to a foreign audience is "How are appointments made?" People in other countries find that particularly intriguing. I suppose what they have in mind is "What's to stop the government loading the Commission with people chosen mainly for their political affiliations or their support for the government?" Now that has been an issue undoubtedly for some ad hoc policy reviews at certain times, but in my experience it has not been thus, for the Commission. Firstly, there are some formal protections within the act, appointments by the Governor General. Well obviously acting on the advice of the government of the day, the Governor General must accept that, I quote, "the qualifications and experience of the commissioner are relevant to the Commission's functions." Well that obviously still allows plenty of discretion and it'd be fair to say that any government might naturally prefer to appoint people regarded as "one of ours" and such appointments no doubt have been made over the years, but rarely has this outweighed considerations of competence and credibility. There are a number of reasons for that.

One is the public scrutiny that such appointments attract and the potential for criticism if an appointment wasn't seen to be appropriate, and secondly, an appointee who was appointed on political grounds and lacked the necessary skills, would actually struggle in the job. Commissioners need to preside on enquiry topics that can be quite contentious, that demand a detailed understanding of the subject matter, and that ultimately require good judgement. The Commission's quite exposed to public scrutiny and must be able to defend its reasoning, particularly where its recommendations if adopted, would have a significant impact on the community or involve some losers.

So we've seen governments appoint and reappoint commissioners with no political affiliations or connections, and some who might if anything, have been seen to have been on the other side. The integrity of appointments has been enhanced by the changes introduced in 2008 for all Commonwealth statutory appointments. These are now required to be advertised and to undergo a formal merit based selection process with recommendations to the minister by a panel headed by the portfolio secretary.

Well the other element I wanted to talk about briefly is the Commission's relationship to the executive and to the minister in particular. As I said, the Commission has no executive powers and its reporting relationships within government are obviously quite different to that of a department of state. These are best summarised as the minister can tell the Commission what to do, but not what to say. When I put it this way at a recent international conference in Seoul held to celebrate the 40th anniversary of the Korean Development Institute, it provoked a bit of a buzz and I took it that this distinction may be unusual internationally.

The minister has formal responsibility for the Commission's work program and the Commission reports to and through the minister. It's the minister who formally commissions studies. However, proposals for Commission enquiries do not emerge only from the minister's portfolio, that's to say the Treasury. They can originate from community groups, from state governments, from other portfolios or indeed, from the parliament or Council of Australian Governments. The minister is required to table the Commission's final reports in parliament within 25 sitting days, which reflects the organisation's dual role of advising government and informing parliament and the wider community. The tasks given to the Commission are set out in terms of reference which are made public and while we're consulted for their workability and the scope and practice to do what is being contemplated, the terms of reference obviously come to us from the minister and affect his judgement and that of the Prime Minister and other relevant ministers about what's appropriate. Any other instructions from the minister are also made public.

So the intent of the act is clear, that for public enquiries, the Commission's relationship with the minister or the government more broadly needs to be arm's length and transparent. A number of protocols and practices have developed in keeping with that. Periodic briefings are given by the Chairman to ministers and to parliamentary committees on the Commission's activities and process. But the specifics of particular enquiries underway and what might be recommended, are not discussed and that's understood and respected. By the same token, it's a reasonable expectation on the part of any government there be no surprises, particularly with the Commission making recommendations in what are sometimes very sensitive policy areas. Accordingly there's a long-standing convention that the government receives briefings on a report in advance of its public release, but only after it's been signed and as they say "gone to the printer". Now this degree of separation can take a new government or indeed a new minister, a little getting used to, and I'd suggest that it has not been the norm for other independent reviews.

Which minister or portfolio has responsibility for the Productivity Commission is not specified in the act. It has little direct bearing on the Commission's formal independence, but it can make a big difference to the relationship with the minister and the government of the day, and more importantly, the contribution of the organisation to public policy. The Commission prospered least when it reported to a minister with responsibility for a particular sector of the economy. The Commission's job is to assess industry or group claims for policy changes in a community-wide context and this sometimes can be at odds with such a minister's perceived role. Thus when located in the industry portfolio in the 1980s, the IAC was, and I quote, "withering on the vine" to use the words of a departmental secretary at that time, whereas the institution had a second lease of life when moved into the Treasury portfolio in 1987, and since then its remit has been widened and enhanced.

The act is silent on the manner and extent of the funding or resourcing of the Commission and in practice this can have a significant bearing on an organisation's independence or more precisely, its capacity to exercise it. Policy advisory bodies, standing ones like the Commission or ad hoc ones appointed for specific tasks, are most independent where they have some control over their own staffing, and reviews headed by independent figures, but provided with secretariats from the relevant policy departments can in practice be somewhat constrained. I remember an old quote from *Yes Minister* by Sir Humphrey who said "I don't care who chairs the meeting minister, as long as we can write the minutes."

Well, the Productivity Commission and its predecessors have always benefited from having their own staff and that's enabled the organisation to build expertise in analysis and in the processes that the Commission follows. Over time it's also helped create a culture of independence throughout the organisation. The Commission also has been funded through a single annual appropriation which has given it desirable flexibility in allocating its resources, although I'd hasten to add given that this is being recorded, never more funding that was needed. I'm sure the Vice Chancellor appreciates that.

So, has the Commission's strictly independent role made a difference to public policy? You'd expect me to say "Yes" and I could just end it there, but I think you deserve a bit more explanation. Against the background described earlier of the twin challenges in public policy, what you could call the "technical challenge" of what to do and the political challenge of how to actually implement it, the Commission and its predecessors have been able to add value in a

number of ways. The most fundamental of these is that in a world of many self interested claimants for preferment and advocates for causes, governments have been able to rely on the Commission for advice which by its mandate, must be motivated only by the public interest. At the same time, governments have been able to depend on the rigour of the research and analysis contained in the Commission's reports, knowing that its findings and recommendations have been informed by extensive consultations and tested through public scrutiny. These two features have seen the organisation being called on by governments to assist in a wide range of quite difficult policy areas, areas that are complex and contentious, but with the prospect of a high pay-off to the community if we could get it right.

This is illustrated by some of the enquiries on our books this year. They include aged care, disability support, international carbon pricing policies, the education workforce, urban water policy, rural R&D support, airport regulation, planning and zoning and the retail sector. Last year's crop included bilateral trade agreements, public versus private hospital performance, paid parental leave, gambling policy, the not for profit sector and executive remuneration. I think you'll agree that all these topics passed the complexity and contention test, as well as being important to community living standards and wellbeing. The Commission has also been an honest broker on policy issues with inter-jurisdictional dimensions and has become a resource for the Council of Australian Governments.

A third way in which the Commission has assisted is by providing ammunition for governments, and sometimes opposition parties as well, in advocating policy initiatives to the public and parliament and encountering policy proposals from special interests. For example, the evidence and analysis in Commission reports have been actively employed by the Australian Government recently in areas such as paid parental leave against an alternative model strongly advocated by the opposition during the last election, gambling against the strident opposition of industry interests and executive remuneration against some vocal corporate objections. Wide ranging reform programs such as the National Competition Policy and the current National Reform Agenda have been successfully advanced in part due to evidence produced by the Commission of the substantial potential gains.

In some cases the Commission's work has helped build active constituents for reform by demonstrating to certain industries or groups the cost to them of the status quo and the benefits of a change in policy direction. This is generally acknowledged for example, in relation to the role

played by the farming and mining associations in tariff reform, and through the business support for reform of public utilities in the late '80s and '90s. But it's also been a factor in some of our more recent work in social policy areas such as aged care and indigenous disadvantage. We've arguably made government's selling job a bit easier through our own consultative processes which on key policy issues such as those just mentioned, have assisted public understanding and help bring the community along.

In those various ways the Commission's enquiries and reports have helped create a more benign or receptive political environment for policy change. Finally, our processes and particularly our draft reports can provide a source of political learning for governments, giving them an opportunity to observe how the public responds to different policy proposals, and thus, better judge the politics of different options. In some cases this has led government to accept and implement quite bold recommendations, for example the modification of community rating in private health insurance, long regarded as untouchable. In others it has led it to reject or defer reforms, for example the ban on parallel importation of books. These benefits have seen the Commission being signed an increasingly diverse range of tasks involving social, environmental as well as economic policy issues with a large consignment of such tasks at any one time.

Some new demands on the Commission have arisen under the so-called new paradigm of minority government at the Federal level. The Commission's been called on to play an informational role in the context of negotiations with minority parties and independents, negotiations which have become important to policy outcomes. Examples include our studies on gambling, private and public hospitals and comparative carbon policies. This is essentially an extension of the Commission's honest broker role and one that we're well placed to perform. However, there's been a further development in the past year whereby the parliament has sought to override the government or the executive, in commissioning work directly from the Productivity Commission. There have been two routes; one is by introducing legislation requiring us to undertake certain tasks and examples are the recent bill on a cost benefit analysis for the National Broadband Network which was defeated and another on foreign ownership of agricultural land which has passed the lower house. But the second and more problematic route has been through orders by the Senate for the Commission to provide it with reports on certain matters. One related to default super fund allocation mechanisms, and another to the introduction of a sovereign wealth fund.

These initiatives are unprecedented in the nearly four decades of the institution's existence. If successful, the latter route in particular, would post obvious problems for the effective operations of the Commission in terms of logistics and the disruption of existing enquiries. But more importantly, it would also become a threat to its continued existence. It would be likely to tip the balance from any government's point of view, from the Commission being seen as an asset to it being seen as a liability. So it was with some relief that I read recent advice from the Australian Government Solicitor that such orders going beyond requiring us to furnish documents based on information in our possession, to actually undertaking new work, would exceed the Senate's powers.

The AGS advice is a particularly erudite piece of work and deserves to be widely read in the current political environment. Among the many sources, it cites and earlier authority, Hearne's Government of England 1886 in quite colourful terms, and I quote, "It is the duty of parliament to advise, but not to command the Crown," in our case the executive. "It cannot of itself issue orders even to the doorkeepers of any public departments." Well, whether this will be accepted as the last word remains to be seen, so watch that space.

In conclusion, policy making occurs in a complex and conflicted arena, one that in many cases is hindered by lack of evidence and biased in ways that can favour special interests over the public interest. Independent policy advice can play an important role, not only by helping governments determine what to do amid such competing or conflicting claims, but also by helping them achieve it through public understanding a more benign political environment.

There are degrees of independence. The Commission and its forebears was created and expressly designed to achieve it to a higher degree. This has enabled the organisation to contribute to better policy development in an increasingly wide range of areas, and those qualities may be at a premium right now under the new paradigm federally, and as I've indicated, this is also raising some interesting new challenges for the organisation. Thank you very much.

Question: **I was just wondering how you retain independence when you are dependent on the government of the day for your financing and is there a better model that you might suggest?**

Is there a better model?

Question: A better financing model.

I think the fact that we're funded by government actually is a pretty good model because in a way it's funding the public good that'd be very hard to get private funding for without compromising the fundee, and indeed there have been some research agencies within government that have suffered a bit from the requirement to obtain a certain proportion of their funding from the private sector, and unfortunately no matter how independent and how good their work is, there's always a slight implication that he who pays the piper, etc. etc. calls the tune. That being said, the Commission has been receiving its funding in a block amount and that's given us flexibility in the ability to allocate the resources where we would want. It might be a different matter if we were receiving money on a contract basis per project where I think there's the ability for the funder to apply a little bit more leverage to the fundee.

So broadly I think our role is a public role. It's best funded by government and the current arrangements of block funding backed up by the statutory independence that the Commission has seems to have worked pretty well.

Question: Ben Cohen. In terms of the impact of the outcome which of the projects that you've been involved with would have the largest single outcome?

I'm always asked this question and I can never answer it properly because we're doing a lot and assessing impact is a subjective matter. If I go back to the history of the institution, it played an important role over a long time in relation to industry assistance and particularly reducing barriers at the border which were very costly to our economy and society. So, cumulatively you'd have to say that was a major achievement and in fact it set in train forces for reform behind the border, competitive forces that made enterprises throughout the country start to have a hard look at their own competitiveness and sources of cost, and low and behold, some of those were regulatory, some of those were to do with high public utility prices and so on. So that was a threshold one I think.

We've also done some quite important reports in the area of infrastructure services. The national energy market is not talked about much anymore, but that did have its origins in a report by the Productivity Commission and made quite a difference. In the social space – and this might be a little bit more contentious – I think our report on gambling had quite an impact, but possibly more

impact on the headlines than in relation to the harm minimisation policies that were advocated in it, but again watch that space. That story is not yet over and we seem to have a rather passionate advocate in the presence of a senator from Tasmania who's picked up our report and he's running with it, albeit with some variations of his own, relative to our recommendations.

So look, I could go on, but I feel I've been too self serving tonight already in what I've been saying and I'll have to get a better answer to that question.

Question: **A couple of key points. Firstly congratulations on the Aged Care Report, a brilliant piece of work. Two things that come to mind is that ministers tend to be a little bit scary and let's say determined in the way that they often approach departments. I'm curious to know how you've managed to build a culture around saying "No" to ministers, "Back off. This is our space." I agree that you've got the structure in place, but there's a culture that flows behind that, and the flow-on impact to the brand of the Productivity Commission which has let's say, changed quite remarkably over the last 10 or 15 years where now the brand of the Productivity Commission is actually seen as very independent and quite powerful.**

Your comment on the brand has reminded me of the fact that New Zealand has created an organisation called the Productivity Commission and they seem to have a sexier website than ours, but I've got a strong interest in sustaining the brand. So we're doing a little bit of work with our New Zealand cousins in that area.

I guess in terms of the issue of dealing with ministers, and as you've indicated we've worked on aged care and a range of other things and there are ministers who have an intense interest in all of those topics, we're probably shielded or protected to some extent by the fact that we're in within the treasury portfolio as I indicated to and through the treasurer or the assistant treasurer, and that's generally accepted. But there are a lot of subtleties in that and it's very important for us to be relevant and to be able to reassure a minister as for example, Bill Shorten at the beginning of our enquiry into a national disability insurance scheme – that had been a major interest of his – to be able to reassure him that we were going to do a good job. So early on we will spend time talking to ministers about what we're proposing to do it and how we're proposing to go about the thing, but it's generally accepted that when we get close to reporting or even part way along the

track, that we don't give a running commentary on what we're doing. That's just something that has lasted a long time. It was there in Bill's time and so we have the advantage, or I have the advantage I guess of an institutional approach that's broadly accepted.

Having said that, I think there's a little bit of education that's required for every new administration and possibly every new minister to understand not only what the rules are, the ground rules in terms of protection the Commission's independence, but also how that can really help the government politically. To be able to say "This is an independent by the Commission that's not been influenced in any way by the government," is actually a powerful thing, provided you have trust in the institution to get it right from the government's point of view. So, so far so good.

Question: **You spoke about the Commission's independence. I just wanted to know that you said you work under strict guidelines that are provided by the minister when you're doing the report. I just wanted to understand how many times the Commission has gone back to the minister and tried to have those guidelines widened or changed? Is that something that you do or it just hasn't happened in the past?**

Well, the guidelines are referred to as terms of reference and they are in the public domain. So anybody can access our website. The way of thinking of it is really the task that's specified for us to respond to, and as I said, the government can tell us what to do, but not what to say. Now sometimes it's true that the terms of reference may be deficient in some respect. We would make that known to the minister and there would be an addition, but that's not really happened very often, and in fact the provisions in the act give us a certain amount of flexibility. So as I indicated, we actually have within the statute, the ability to look at other matters that are related to the matter at hand. So there's a certain amount of flexibility in relation to that.

When I was in New Zealand talking to a select committee of their parliament when they were thinking about introducing their own Productivity Commission, that question was a very important one because the issue at the time in New Zealand was should they create a New Zealand Productivity Commission that can initiate its own enquiries and I was urging them not to try to create such a beast, for the reason that I indicated earlier, that given the power that the Commission has in the realm of ideas, it's very important that the government has some control

over where it focused its laser beam if you like. That's been a very important thing. Now, there'd be a problem if the government chose not to give us anything to do, but that's not been the case.

The second thing that cropped up in New Zealand in relation to their act was whether they should have a requirement for the Commission to produce a draft report, and I was urging them that they could put that into their legislation. It's not actually in our legislation, but it comes into the guidelines or the terms of reference, and that's very important. But whether the government asked us to do a draft report or not, we would probably do one and there's never been a case when the government has said "Please don't release a draft report."

Looking back over my time and I'd be interested in Bill's own comment on this, one of the great strengths of the Commission's process has been precisely the testing of our preliminary ideas through a draft report. And if you think about some of the public reviews that have sometimes gone a bit astray, often it's because people got a surprise at the end or because the detail hadn't really been threshed out with stakeholders sufficiently to make it a robust set of recommendations.

Question: **Thank you very much for your talk. I'm just wondering whether there's any comment you'd make to this thought, and that is it seems to be – and I may be wrong here – the Productivity Commission, its ideology perhaps I could say, is very much that of free markets and I'm wondering are there many exceptions to that, because certainly economists do recognise that there are limitations to free markets? I don't know if I'd be right in saying it might be an oversimplification, but to an extent I think the Global Financial Crisis which began in the US perhaps could be sheeted home to too much reliance on free markets amongst the banking industry and to too much deregulation. Lucky our Campbell & Wallace reports here did recommend that we retain some regulations. We went down that path too, but not quite so far.**

Now I don't know if that's quite fair, but I think that's somewhere near the mark. So I just put that up as an example of perhaps where free markets can go crazy and to extent the GFC perhaps is an example of that. But the Productivity Commission it seems to me, believes passionately in free markets. I've read some of your reports, but in years gone by I don't keep up with them so much

now. There are too many of them. I have a great admiration for the sort of work you do, but that's the feeling I've got. Am I right in saying you believe very much in free markets? Are there times where you simply think free markets don't work? Are there times when you see regulations as being necessary still? Would it be perhaps fair to say that there was a case for tariffs once in the early 20th Century, that perhaps it did help the manufacturing industry? I don't know. I'm wondering where's the limit to what you do and is there another case? What about equity? Is that something you look at very much, because markets are very good at it usually, at achieving efficiency, but not always so good at equity? Any comments?

I could hold you all here for another hour. I actually gave a talk at the Whitlam Institutes called "Markets, How Free?" and I guess implied in that title is my view that you almost never want to have an entirely free market. In fact, the best markets are well regulated markets and the point you make I think about the financial crisis being sheeted home to inadequate regulation is right. Markets are markets. All a market does really is to try to find willing buyers and sellers and find a price that they're both happy with. That's all a market does, but there are many ways in which markets don't work effectively and you need regulation, property rights, issues to do with equity and fairness and so on, all of those things come into play.

I think we got a bit of a reputation as passionate free marketeers I guess, probably in the area of industry assistance and particularly in the area of tariffs, but I think we've been vindicated because I think what became clear is that was a particular kind of intervention that ultimately was not in anybody's interests, and including the manufacturing sectors. The manufacturing sector is under big pressure again right now with the high dollar, but you notice that no side of politics is saying "Let's go back and put some barriers up to trade again," because those barriers really were getting in the way of productivity and economic performance, and ultimately the standard of living of Australians.

So, I guess the mantra of the Commission if we had one related to regulation would not be deregulation, but appropriate regulation and finding the ways in which regulation can meet societal objectives in least cost ways. We've talked about aged care. We've talked about national disability insurance. In some of those cases it's really about having better regulation or indeed sometimes, creating the scope for a bit of market pressure, but again within the framework of

regulation that makes sure that you get good outcomes from that. So read my little paper on "Markets, How Free?"

Question: **My question is related to the agenda setting and how the Commission at the other end deals with it. Of course governments have options. They may choose to use the Productivity Commission to investigate a certain subject, an issue. It may also in some instances, choose to do the piece of work outside the Commission. I would imagine that the current education review funding enquiry could have possibly been conducted by your Commission. So that's one thing.**

The other thing is you have of course a certain volume and a certain capacity to serve the government. If you suddenly face a piece of investigation that has some urgency about it and wasn't previously on the agenda, how then do you deal with it? Do you stop temporarily doing some work on some stuff and then say "This now has priority"? Or do you say "Look minister, we're fairly filled up for the next 12 months. This has to wait a little bit"? What's your answer there?

They're two good questions and again, I could bore everybody for quite a while in answering both of them. I guess in relation to the first one, the Commission has a certain number of resources and we need to get the most out of those, and there are certain things that don't come our way. They're typically things I guess which, I don't know, maybe are highly politically sensitive where the government may not like the idea of telling us what to do but not what to say. Or there might be circumstances in which a review needs to be done in a very quick time. There have been some ideas put to us to do particular reviews where we've essentially said "No" because we couldn't have the public consultation process that really is the hallmark of our contribution to public policy. So when the Commission does something, people expect to have a bit of a look-in at the beginning, put in a submission and certainly to have a draft report to respond to. That's what we do. That's our contribution.

But even within that domain we do take time. So it's a matter for the government to choose a topic hopefully in advance, rather than in a crisis situation that warrants that kind of attention over that period of time, and the sorts of topics I've talked about tonight are ones where that's occurred. Now, that's not to say that things don't come out of left field. One of the arts of our

forward agenda I guess is to leave a little bit of space in case something like executive remuneration hoes into view.

I was overseas and got a phone call from the minister "How'd you like to do an enquiry into executive remuneration?" Well sitting in a little café in Siracusa at the time, it was the last thing on my mind and I thought "What happened in the two weeks that I've been away from Australia to make executive remuneration such a big deal," and of course you were here and you saw what happened and it bubbled up. It was one of those issues where the government was on the back foot, the unions were pushing hard, they wanted a cap on executive salaries, they wanted particular ratios applied, they wanted pretty heavy handed regulation, and the Commission was able to come into it and I guess slow things down a bit, put a bit of scrutiny, get a bit of evidence together. "What's the problem?", "What are the possible solutions?", "What are the costs and benefits?" and hopefully, although not all business people would agree, come up with a set of recommendations that net positive rather than a negative.

But as I say, there's more open science in that and that may have been an exception in the sense that it was an urgent task that needed cooling down. So our timeframe actually was played to the government's favour.

Question: Thank you for your presentation Gary. My question is what is the Productivity Commission's view on overseas education, in particular tertiary education attracting overseas students and what it means to our economy?

I guess in broad terms it's obviously very, very important to us and I know there are all sorts of policy issues around that. I actually feel that it's important to us in a number of respects. If we think about the Colombo Plan and the students who came at that time and went back to their own countries and created a lot of goodwill which we've benefited from beyond that time, that's one way. The other way which has increasingly been happening in Australia is that foreign students come here and end up settling in Australia. Quite a high proportion of foreign students have settled in Australia. It's hard to think of any better migrant really, than someone who's come as a student, worked in our universities, improved their language skills, got comfortable in the country and then decided to stay.

So I think the only reservation I have about that is that's human capital that perhaps they need even more in their own countries. But certainly the education sector is a very important one to Australia and the international component of that is very important too. Where it's get tricky – and we get back to the question of appropriate regulation – has been some of the nexus between international education and migration, and how I guess some entrants into the education industry were more seeking to exploit the kind of immigration carat than the education asset, and I think that has been a bit of a problem and it's caused some disturbance and so on. But certainly from the point of view of our main universities including this one, it's very important that we make international education an important part of what we do.

Bill Scales

Gary thanks for really an outstanding lecture. You'd asked me a question actually about draft reports and in some ways it is interesting because I think the whole idea of a draft report plays, in addition to the points that you made, it plays this very interesting educational role because what happens with public enquiries, even the ones that I'm currently doing at the moment, what you actually get is the public view changing over time if you carry them out well, because what you're also trying to do is to put into the arena a whole range of new ideas that people can begin to think about and digest and argue amongst themselves about and so on, and in some ways the enquiry process almost has an outcome of its own because it's quite amazing how the end of some of these enquiries, particularly some of the complex and difficult ones that Gary mentioned, people are over here when the enquiry starts, but if you treat people with enormous respect and take into account their views, by the time the enquiry is over it's really interesting how people tend to coalesce around the right outcome.

I think Gary's point about the draft report is absolutely right because that's one of the important processes that's followed to enable people to coalesce around what actually makes good sense in the long run for the community at large. Peter can I just make a comment about your question? I'm sorry to do this, but your point's a really important one, but just to support Gary, a lot of people would never have thought that the report that Gary did actually, into research and development going back into the early 1990s, recommended that government double its contribution in R&D.

Now it came as a huge surprise to people that the Productivity Commission would actually say "Double the contribution from the public purse into research and development." Now why did Gary and his team do that? He did it because he said "The efficiency gain for the whole of the Australian community would be enhanced." So I think in a way what the Commission particularly under Gary has done, is actually take a very broad view that actually asks the much broader question. In fact, how does equity enhance broadly defined by those sorts of issues? So I think it's not so much about sort of an ideological point of view that the Commission has done, but they actually come at it from this point of view that says "On the basis of the evidence, what makes sense?"

Another one is the core question about private contributions to public education. The Commission has been on the record to say "There has to be both a public and a private contribution to public education," yet most people wouldn't recognise that that's something the Commission would say.

Can I answer Ben's question? Ben, a lot of people would never have recognised for example, that in 1990 before water reform was on anybody's agenda, these guys did it. These guys started to talk about issues like "Maybe we should put a price on water?" Before it was anything that people would talk about, huge change in the environment as a result of what Gary and his team have been doing over a long period of time.

Anyway, I'm here to introduce Linda, but also really to say thank you to Gary. I think Gary's one – and I don't say this lightly – I think Gary is just simply a great Australian and the work that he does and the work that he and his team do is just outstanding. I must tell you another anecdote. I got this really interesting call when I was Chair – and I say it for a reason – I got this really interesting call from Jack Nasser – drop a few names here and there as I like to do – and at that time he had left Australia. You know Jack Nasser's head of BHP, and he was working then as head of Ford. He was the CEO of Ford. He used to very graciously always just send me a Christmas card because I used to deal with him when I was working implementing the Button Car Plan, and we became friends in a funny sort of way. I'll put it that way really. Anyway, he sent me this Christmas card and on it he said "What the United States needs is a Productivity Commission," because he could see that it was in his interests to get the sort of broadly rational debate about what is in the best interests for the community through an organisation like the Productivity Commission. So these guys do outstanding work.

I would now like to introduce Swinburne's Vice Chancellor Professor Linda Kristjanson to formally thank Gary for being with us tonight. Most of you would know that Linda's academic career spans 30 years and includes participation, education and research in three countries; Canada, the US and now Australia. Linda is a specialist in clinical palliative care research and has held positions on the National Cancer Institute of Canada's Research Scientific Committee and the National Health and Medical Research Council of Australia. Not long after arriving in Australia some 15 years ago, Linda established the West Australian Centre for Cancer and Palliative Care. Linda has also served as Deputy Chair of the Board of the Australian Primary Health Care Research Institute.

Prior to Linda's appointment as Vice Chancellor here at Swinburne, Linda was the Deputy Vice Chancellor of Research at Curtin University. In 2002 Linda was named the Telstra Businesswoman of the Year in recognition of her entrepreneurial work in health and science. During her academic career Linda and her work has attracted more than $30 million in competitive research funding and Linda has published more than 200 referees articles. Of course, one of Linda's key roles is to maintain Swinburne's research reputation. Please make Linda welcome. Thank you.

Linda Kristjanson

Thank you very much Chancellor and let me begin by just offering my warm welcome to alumni, colleagues, friends of Swinburne. It's wonderful to have you here tonight and it's a privilege to be able to thank our guest speaker after such a thoughtful and reassuring and trustworthy presentation.

Seeing's the Chancellor is taking a little bit liberty with his script, I thought I might just say something. I can't let this moment go by without I think, commenting on the question that was raised. So thank you to our Mayor from Boroondara, thank you Nicholas, for asking the question about the role of international students. It so happens that today, speaking of enquiries and investigations, the report of the Knight Review that undertook to examine the importance of international student education and the linkages between international education, visa regulations and policy settings was released recently and the government has endorsed all recommendations in that report.

I am extremely gratified, as are our colleagues that this report is a very sensible report. I think that what has happened in the past, there's been some confusing messages, some rather careless

policy settings that have been an overreaction to some international education offered by providers that were not providing quality education and perhaps attracting students for the wrong reasons into less credible courses. That damaged the brand within Australia and that has hurt this sector. It has certainly hurt the export of education internationally, but more importantly I think it has had a tarnishing effect on the message about Australians and the extent to which we are a welcoming country. That's a sad thing and I'm grateful that Malcolm Fraser is raising that question in discussion and encouraging us to return to our roots as a country that does give people a fair go.

So the policy recommendations that will be coming through I think will allow us to provide opportunities again for students to come, to be welcomed to undertake education with us, to find sensible pathways to employment, if that makes sense, but it will also allow us to continue to create a forum within which we can provide more diplomatic harmony in the region because when you bring students and you educate students with you, we share values, we share understandings and even if students don't stay with us, they return as lifelong friends and alumni.

It's particularly important for Swinburne University because we were one of the first universities to embrace the Colombo Plan. Twenty-five percent of our students are international students and they come from 95 countries, and that means in actual fact that all students are international students because they have an opportunity to work with students, to learn from others across cultural boundaries and we believe that when they graduate, they're better prepared to work in different settings in an international way.

So I think today is a very important step in our policy settings as a country and I wanted to just take the liberty of just commenting on how important it is and the leadership role that Swinburne is playing to try and foster that more positive message.

I would like to now take an opportunity to offer my sincere thanks to you Gary Banks for your very informative and engaging presentation. We greatly appreciate your contribution to the Swinburne community tonight, and your willingness to share your expertise with us as you outlined the work of the Productivity Commission in providing independent and trustworthy policy advice to government. In identifying regulatory reform opportunities and evaluating reform outcomes on a range of economic, social and environmental issues, the Commission fulfils a critical role in helping governments determine what to do.

Over the years the Productivity Commission has contributed to increasingly diverse policy areas affecting the welfare of all Australians. At Swinburne, our interest and engagement with the vital and highly relevant work of the Productivity Commission is clear. As a university we participate actively in research and policy debate in many fields including education, housing, urban sustainability, citizenship and democracy, immigration, communication, public administration and infrastructure. The research we undertake ranges from theoretical, scientific and social advances and new ways of understanding to innovative projects conducted in collaboration with our industry partners.

Our work is driven by a commitment to excellence, intellectual rigour and a long-held sense of responsibility to contribute to public policy and innovation. In that sense, Swinburne and the Productivity Commission share an aspiration to determine the best ways forward for Australia's economic performance and community wellbeing, and ensure that the chosen policies will be in the national interest.

So once again, I say thank you so much Gary for delivering tonight's most informative and thoughtful lecture, and on behalf of Swinburne, I'd like to present you with a small gift as a memento of tonight and as a token of our appreciation.