

CORRECTED VERSION

STANDING COMMITTEE ON ENVIRONMENT AND PLANNING

LEGISLATION COMMITTEE

Inquiry into the regulatory impact statement process

Melbourne — 8 May 2013

Members

Mr R. Dalla-Riva

Mr A. Elsbury

Mrs J. Kronberg

Mr C. Ondarchie

Ms S. Pennicuik

Mr J. Scheffer

Mr B. Tee

Ms G. Tierney

Substituted members

Mr S. Leane for Mr B. Tee

Participating members

Mr B. Finn

Ms C. Hartland

Mrs D. Petrovich

Mrs I. Peulich

Mr L. Tarlamis

Chair: Mr R. Dalla-Riva

Deputy Chair: Ms G. Tierney

Staff

Secretary: Mr K. Delaney

Witness

Mr R. Campbell, Economists at Large.

The CHAIR — I welcome Mr Campbell, economist, from Economists at Large. I declare open the public hearing tonight. The hearing is in relation to the inquiry into the regulatory impact statement process. I welcome the witness from Economists at Large. Before we start taking evidence I should just advise the witness that all evidence taken at this hearing is protected by parliamentary privilege, as provided by the Constitution Act 1975, and further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege.

All evidence is being recorded, and you will be provided with a proof version of the transcript in the next couple of days. You have been allowed 30 minutes for this session, so just after about 9.40 p.m. we will finish. To ensure there is sufficient time for questions the committee asks that your opening comments be kept to about 5 minutes. We ask you to begin by introducing yourself, your title and your business mailing address so we may provide a copy of the transcript. Mr Campbell; you have the floor.

Mr CAMPBELL — Thank you, Chair. My name is Roderick Campbell. I am an economist and director of Economists at Large. I am very pleased and excited to be here this evening. I have in fact never been in Parliament House before, so it is a bit of excitement. I was also pleased to be invited along because, unlike your last witness, I do not have a lot of experience with the regulatory impact statement process in Victoria, but Economists at Large and I certainly do have a lot of experience in planning processes and an involvement with state governments, particularly in New South Wales and Queensland in recent years.

For those of you who are not familiar with Economists at Large, we do commercial consulting but we also fancy ourselves as a bit of an Economists without Borders type of outfit, and we provide economics consulting services to community and environment groups on a very affordable and often pro bono basis. While we do not have a lot of experience with the regulatory impact statement process in Victoria, what we have seen here certainly reflects what we have seen in other states.

Overheads shown.

Mr CAMPBELL — A few trends that we have seen that I wanted to talk about tonight are that I believe state government departments do not critically examine economic analyses that they are given. That is especially the case if that analysis tells them what they want to hear. I believe independent — supposedly independent — oversight bodies often fail to provide the critical review of that sort of analysis that I think they are supposed to do. Obviously in Victoria I am talking about VCEC; in New South Wales I am talking particularly about the Planning Assessment Commission.

The experiences I have had recently in Victoria that have led me to think these issues are a bit of a problem here as well include a submission I made — or Economists at Large and the Australia Institute made — to the wildlife game regulatory impact statement and also some experience we have had recently talking to a land-holder who has made a complaint to VCEC about the Department of Sustainability and Environment deciding to become a participant in a market that it regulates. They are the two examples I would like to talk about. I am happy to take questions this evening; some, maybe, I will take on notice. But maybe as an opening statement I will leave it there — and open to questions.

The CHAIR — I understand you are critical in your submission, or you made reference to the RIS process in the wildlife game regulations RIS.

Mr CAMPBELL — That is correct.

The CHAIR — You are critical of the criteria analysis as a method of cost-benefit analysis, and you discuss the use of non-market valuation as a way of apportioning costs and benefits in dollar terms to things like animal welfare or resource depletion. Can you discuss how non-market valuation should be used in the RIS, and what was your view of the consultation process used by the departments in determining non-market valuation, if at all?

Mr CAMPBELL — In that case there was no non-market valuation conducted. I think the big problem paragraph in that regulatory impact statement was this one, where it said:

The Victorian government in 2008 estimated that game hunting contributes around \$96 million to the Victorian economy. Given that the annual cost of the regulations is in the order of \$1.3 million —

in present value terms —

... and the benefits associated with game hunting in Victoria are likely to be in excess of \$96 million, it is apparent that the benefits associated with the proposed regulations outweigh the costs.

Now as an economist there are a number of things wrong with that paragraph. That \$96 million in benefits is not actually a benefit; it is a transfer between two parties in the Victorian economy, so it is a zero sum item as an economic benefit. The only way that \$96 million would be a benefit in economic terms is if you believed that game hunters who suddenly were unable to spend money on game hunting would sit at home and tear up their \$50 bills and remove that money from the economy, and that is obviously not going to happen. The economic benefit of hunting to Victoria is approximately zero, and that was not picked up in this case by either the consultants, who I think were Regulatory Impact Solutions, or the Department of Primary Industries or VCEC, because in response to our submission the Department of Primary Industries replied that VCEC had signed off on this analysis, so it must be okay. As the economic contribution of hunting expenditure is close to zero — —

Mr SCHEFFER — There was no undertaking of net benefit? Because when you describe that, do you know, or was analysis done about whether any of those game hunters came, for example, from interstate? Would that give you a net benefit?

Mr CAMPBELL — That would be interesting to know, and that certainly was not provided in that regulatory impact statement. I suppose we are assuming that they are all Victorian.

Mr SCHEFFER — Yes, so if they are all Victorians and it is discretionary spending — they go hunting instead of going to Luna Park — then it is not a benefit.

Mr CAMPBELL — Absolutely, and in some research I did with the Australia Institute, which has not been published yet, there was a survey done of participants in game hunting, and they described that if they were not allowed to go game hunting, they would most likely shoot rabbits or go fishing. Clearly that money is going to be spent in very similar pursuits in Victoria, regardless of those regulations.

Mrs KRONBERG — I would just like to amplify this point — just where we are at the moment. If we are talking about dollars and cents, kilometres, how many hectares, it is such an easy dimension to describe to have a universal appreciation. In terms of the descriptors that would then be brought to bear, if we are not wanting to have a dollar sum attached to the benefit or the disadvantage, do we need a new taxonomy of descriptors — of benefits that actually aid people in their deliberations when dollars need in a way to be transcended?

Mr CAMPBELL — Yes, sure. I think that is absolutely right, and I think that is why we have a decision-making process that is not entirely run by economists. That is why we have elected representatives who take into account a whole range of issues in deciding the impacts and benefits and costs of regulation. I think that is entirely appropriate. As economists we do tend to get stuck with trying to put dollar values on things — and that is part of what is recommended in guides to regulations. We do have non-market valuation techniques, which the Chair alluded to before, which can be of assistance in that. In part of our submission we have had a go at this. In trying to value the satisfaction and enjoyment that duck hunters — or I think game hunters is probably a better, more correct term — get out of going game hunting, economists would try to estimate what we call consumer surplus, the amount that those hunters might be willing to pay over and above what they had to to go hunting.

To a lot of people — and I think they are right — that is a pretty clumsy way of looking at it, but that is how, in terms of cost-benefit analysis, you try to do that. There have been studies that have tried to do exactly that. Happily, Whitten and Bennett in 2001 carried out a choice modelling survey to estimate South Australian duck hunters' satisfaction or consumer surplus. The question was the amount they were willing to pay over and above what the experience cost them, and those authors found that hunters would be willing to pay \$34 to \$59 per hunting day, adjusted to 2011 dollars. By extending that across the statistics that the DPI provided about game hunting in Victoria that looks like an improvement in the wellbeing of hunters of between \$10 million and \$17 million. That is an attempt to quantify those other measures you are looking for. Does that answer your question?

Mrs KRONBERG — Yes, I think it does.

The CHAIR — I think Mr Elsbury had a question.

Mr ELSBURY — I am just wondering, in relation to being able to quantify game hunting, is that not based upon a political bent rather than actual expenditure? I say that simply because any activity could be argued to have a net zero benefit to the economy, because if I was to say, ‘We will ban bagpipe playing because it is noisy’ — I have to put up with it because my wife does it — but in any case if we were to say, ‘We will ban it so she can play clarinet’, that is a transfer over to another activity, therefore the benefit of bagpipe playing in the state of Victoria is net zero. Any activity could be argued as having a net zero benefit, whereas in actual expenditure of people who are undertaking any activity, whether it be boating, a sport, motorcycle racing or whatever, you can see that they spend X amount in the economy for accommodation, travel, supplies, fuel, which then builds up into being a value in the end to the economy because money is moving between people. Isn’t that right?

Mr CAMPBELL — I do not think that is quite right. I think you are right that pretty much any leisure activity in Victoria could be substituted with another one, and if we banned bagpipe playing, people might well take up clarinet playing with no real change in the level of expenditure of Victorians but a loss in the welfare of bagpipe players. Does your wife really play the bagpipes?

Mr ELSBURY — She does.

Mr CAMPBELL — I am very pleased to hear it. My girlfriend, who is here tonight, has often threatened to learn to play the bagpipes.

Mr ELSBURY — At least she is not a drummer; that’s all I have to say.

Mr CAMPBELL — So the expenditure on leisure activities is largely substitutable between leisure activities, but they are leisure activities — they generally are not productive activities. So game hunters do not really contribute a lot to the economy in terms of production. Perhaps professional shooters of kangaroos or pest animals may do, but here we are talking about the regulation around what is, in my understanding, largely a leisure activity. So I think it can be easily substituted by other leisure activities.

The CHAIR — Whilst we are on that, because I think it is important, your presentation still demonstrates that there is a net benefit of between \$10 million and \$17 million by the addition of duck hunting, irrespective of the \$96 million. On the assessment you are saying that what they should have done was take the consumer surplus approach to this particular RIS, irrespective of the emotions around the wildlife game regulations. I think what you are trying to argue, from an economist’s point of view, is that it would have occurred anyway.

Mr CAMPBELL — Yes.

The CHAIR — It is about the consumer surplus and that the assessment process did not take into account that the transference of money is irrelevant unless there was some additional expenditure which would occur because of, as you put it, consumer surplus to that particular event.

Mr CAMPBELL — That is absolutely right.

The CHAIR — I had the disadvantage of dealing with DTF in a previous role and having to deal with economists. Certainly when you are dealing with some automotive manufacturers the benefits are not necessarily as clear cut, and the same can apply to economists.

Mr SCHEFFER — Can I just add to that: you have in your introductory letter a quotation from the *Victorian Guide to Regulation*. If I could expand on that in the context of the Chair’s question, are you also saying there is an inconsistency between the \$1.3 million in the point you made earlier on and the requirements of that guide?

Mr CAMPBELL — Yes, that is correct.

Mr SCHEFFER — Sorry, I just wanted to feed that into the question.

Mr CAMPBELL — I think to strictly comply with the guide to regulation — I do not have the quote that I put in there, but I can imagine what it says — then you would need to take a consumer-surplus approach. That is what cost-benefit analysis is based on.

Mr SCHEFFER — The first sentence says, ‘Be aware of transfers and avoid double counting’.

Mr CAMPBELL — Yes because when, for example, a duck hunter buys a new rifle, that is a cost to them but a benefit to the shopkeeper. So that is a transfer rather than a net benefit.

The CHAIR — So if the duck hunter was shooting to provide duck meat to the world market, is that then an economic benefit?

Mr CAMPBELL — Yes, I think there would be some economic benefit there — —

The CHAIR — Because you used the example of kangaroo and other types of animal where that was on a production level.

Mr CAMPBELL — Yes. I think perhaps if you were really wanting to quantify right down to the dollars and cents maybe we would need to consider the value of duck meat produced, but I think you do get to a point where — are we spending too much time and effort getting to a particular figure? Is that really worthwhile?

The CHAIR — So you are saying that the RIS is not needed in that particular case?

Mr CAMPBELL — No, I think the RIS is needed; I just do not think it was conducted very well. I think it was conducted erroneously.

Mr SCHEFFER — I just want to get that really clear because I thought the point about the bagpipes and clarinets was one that needed exploring, and you put up another scenario, but to me the important point is that you are saying that the *Victorian Guide to Regulation* makes your position clear. In fact you are validating where you are coming from, relying on the guide, and you are saying the investigation into game hunting — and that is just an example — was inconsistent with the guide itself?

Mr CAMPBELL — Yes.

Mr SCHEFFER — So if people conducting the impact statements and assessing economic benefit relied on and were consistent with the guide, then things would be okay?

Mr CAMPBELL — I think that would be a great improvement. Again, I am not sure if this is a mistake that happens a lot in Victorian regulatory impact statements — I have only ever looked at a couple of them — but this was one that I picked up.

Ms PENNICUIK — Thank you, Rod. I just want to expand on that point because obviously I have read your submission to the RIS previously because I referred to it when I moved to disallow those regulations in the upper house, and most people sitting around here will know that. One of the pivotal paragraphs was the one we have just been referring to. It struck me, from your submission, that the RIS process has not followed the guidelines, and that seemed to me to be the basic flaw which led to the other flaws. I also took the view, which is not an economic view, that the \$96 million was being used to justify the continuation of the activity. So that was not from an economic point of view, that was from a political point of view.

Getting back to the compliance with the guidelines, you expressed surprise that it was able to get through VCEC. The person who was presenting to us just previously also made that comment and said that he had seen quite a number of RISs go through that he was surprised went through VCEC and what came out the other end, because they had problems. My question is: do you have any idea why that would be happening? Why was this RIS able to get through and the others — I am not sure what they were, but they were referred to by the other speakers, so they are getting through — that are not complying with the guidelines and VCEC is signing off on them? Do you have any idea why that might be?

Mr CAMPBELL — I am afraid I do not know why that might be. I have not had very much to do with VCEC over the years, so I would really be guessing.

Ms PENNICUIK — You would be concerned about it?

Mr CAMPBELL — Yes, I think it is concerning. As an economist I think that is a quite basic and fundamental error and that cost-benefit analysis 101 should teach it.

Mr LEANE — Previous witnesses we have had on this reference have indicated that the system we have in Victoria is best practice in the country and may be best practice worldwide. I have actually been at the point of

thinking that it does not mean that a committee such as this that has the reference to look at something like this has to make recommendations just because we are supposed to. You are the first person who has come here and has convinced me that maybe we should do that. I will put you on the spot to do some work for me. This is my personal opinion and not to do with the committee.

Would you do some work for me now and tell me how you would make a recommendation to ensure that what you have brought up as a concern here cannot be implemented again? I told you that I would put you on the spot.

Mr CAMPBELL — It is an excellent question, and one that I wish I had anticipated better. In some ways I guess I was hoping that my appearing here and bringing up some of these matters might sharpen up —

Mr LEANE — Get us to put our minds to it.

Mr CAMPBELL — some of the economists in the Victorian public service, because I know that there are some very good ones there. One recommendation I would not make is that there is a need for more consultants because this is all too technical and too hard. I do not think that this is too hard; I think it is very basic. So I guess my recommendation would be to encourage departments that are likely to have to prepare a regulatory impact statement to ensure that their staff have adequate time to review it and, as an economist, that they have a bit of economics training, not that they necessarily have a PhD in economics or anything, but I think a recommendation that some more staff were trained in some of these skills would be of assistance.

The CHAIR — Thank you for your reply, which was to the committee. While Mr Leane was wanting ownership of it, I understand where he was going. It made sense to the committee. Often witnesses will present evidence not knowing what other evidence has been provided and so that fills in the gap. It was a very good answer to an interesting question.

Mrs KRONBERG — I was particularly interested in this when you talked about augmenting the expertise inside departments. I would like to take that just a little bit further. In my career I can draw upon fair measures of authority in marketing, so if you and I wanted to do an arm wrestle across the table, you as the economist and I as the market, I could find a number of ways that could be dimensioned and measured and less able to dimension but be able to describe a benefit.

I will give you a very quick example. It would be such as the power of word of mouth from those hunters leaving whatever duck-hunting environment, whatever wetland or lake, that the local government had invested in and maintained in terms of its environmental viability, because for certain times of the year the duck hunters came and you needed to have the optimum environment for them to come to. If we take it outside whatever the local region might benefit from locally, when those satisfied duck hunters go back to their homes in another state, the word of mouth — which is like pinning jelly to the wall; it is very hard to quantify — means more people might come back the next year. So you go off and have an expanded tourist strategy, with people who provide advice and marketing strategies and advertising dollars and all those sorts of things, so it grows exponentially. It starts to look like a Mandelbrot set, does it not, really? So it is almost hard to say where it stops.

My question, with that information, is: should we have people with multiple disciplines in this, so that we do not have a sort of an isolated silo mentality but we actually have people who can move through like osmosis, the blood-brain barrier, and move in and out of one discipline to another and applaud that and encourage that, so that the left hand can talk to the right hand — the left brain can talk to the right brain?

Mr CAMPBELL — I wish my brain talked to my right brain more often. I agree entirely. I think that there is a great need for cross-disciplinary work, and I am sure that that happens a lot in many departments. I work quite a lot with lawyers, farmers, ecologists and all sorts of people, and I find that very satisfying. So I am certainly not here to say, 'Let's not have cross-disciplinary engagement and leave everything in the hands of economists'. I just think that economists do have a role to play and it should be played properly.

Mrs KRONBERG — Yes, thank you.

Ms PENNICUIK — You mentioned that you had experience in Queensland and New South Wales and their equivalents of VCEC.

Mr CAMPBELL — It is not quite an equivalent, but the Planning Assessment Commission is a similarly independent body, although its charter is a bit different from VCEC's.

Ms PENNICUIK — Have you had much experience of looking at regulatory impact statements in those states?

Mr CAMPBELL — No, much more about project assessment — major project approvals. I guess the other experience that I did want to bring to the committee's attention is some advice I have been giving to a landowner north of Geelong, just out of Meredith, who was in negotiation with a major property developer, Intrapac Projects, and their lawyers, the international law firm DLA Piper, for a deal on grassland offsets. I am not sure how much the committee knows about biodiversity offsets and the markets that exist in Victoria. There are a few nods and a few shakes of the head.

Here is one I prepared earlier. If you want to clear native vegetation in Victoria, you need to purchase or otherwise obtain an offset of a similar area of that vegetation being restored or replanted. In Victoria we have a world-leading, very much 'at the front of the curve' biodiversity offsets program. Whether or not you think it is doing a good job is a bit of another question, but it is certainly a leader. So we have this offset market, and these are quotes by the DSE about it.

'The offset market is a compliance market, that is, it exists by virtue of a regulated requirement.'

It is operated by the DSE, and because we have many different types of vegetation:

'[The] offset market is really many markets which operate alongside each other with limited interoperability/substitutability.'

The farmer I have been working with was in negotiation for an offset package. I have not been privy to the exact details but we are talking around \$800 000 here. All this was happening in Meredith out the back and north of Geelong, and the property development that he was planning to offset was just outside the urban growth boundary. Where all this is happening is quite important, particularly the bit about it being outside the urban growth boundary. This is important because inside the urban growth boundary:

'[DSE is] the monopoly provider of vegetation and habitat offsets within the growth areas (priced on a cost-recovery basis ...)'

That is within the urban growth boundary, but these negotiations I am talking about were happening outside of it, where the actual market is meant to be how things are worked out.

Between the end of 2011 and the middle of 2012 there was a change in regulations around this, with no RIS, no business impact statement and no consultation at all. I am not an expert on exactly when an RIS is required, so I am not alleging that there was any wrongdoing in terms of the lack of RIS there, but certainly there was a lack of consultation. DSE, in conjunction with the federal department, decided that it would allow itself to sell some of its offsets outside the urban growth boundary. What DSE was doing there was dealing itself into a market that it regulates, selling biodiversity offsets that it produces at cost-recovery basis and then selling them into this market, where it is meant to be encouraging a free market with private providers of biodiversity offsets. Does that sort of make sense?

The CHAIR — Yes.

Mr CAMPBELL — I realise it is a bit of an Alice in Wonderland sort of arrangement.

The CHAIR — Are you saying they were outside the RIS process, and this was a — —

Mr CAMPBELL — There was a change in regulation — the exact details on it I would have to take on notice — and there was no public consultation, and suddenly DSE decided that it would continue to play a more traditional role of facilitator and regulator except that it would sell surplus grassland credits into these markets that it regulates. It also did not rule out a role in the offset market if required for demonstration or market development purposes or one might guess — —

The CHAIR — I understand what you are saying. So are you saying that there was an exemption provision for this particular issue, from the RIS?

Mr CAMPBELL — Can I take that on notice?

The CHAIR — Yes, and can you also take on notice: what was your understanding of the processes that made it exempt, and how were those exemption considerations determined? Because I am interested in exemptions for RIS and how that determination is made. I do not want to go into specifics about individual companies or groups. It is more about the principle of what made a department exempt and how was it exempted. I have great concern, I must say, that we have a Parliament that scrutinises acts and we have the capacity to scrutinise regulations, yet if something falls outside those two parameters, which this appears to do — and I do not know the specifics — how are we then able to have a level of scrutiny over the role of departments or indeed bureaucrats, who then make determinations without any oversight?

Mr CAMPBELL — I will certainly take that on notice.

Ms PENNICUIK — Chair, shouldn't we be able to find that out — whether there was an exemption or not?

The CHAIR — I am only taking advice from the witness. The witness has agreed to take that on notice. As I said, I do not particularly want to go into the individual case. I do not think it is our role — —

Ms PENNICUIK — I am not talking about the case; I am talking about whether there was an exemption from the RIS process.

The CHAIR — And the witness has undertaken that he will follow that up.

Mr CAMPBELL — That is okay; I am happy to follow that up. I realise we are probably running out of time. I guess the only further things I wanted to emphasise were that obviously DSE deals itself a bit of a free kick in its own market but also that the land-holder did lodge complaints with VCEC, which refused to investigate. It is not that it refused to launch legal action or anything like that — he was not asking for it to do that — but it refused to open an investigation on this basis. There is further context to this, which I would be happy to provide:

'In considering whether DSE's involvement in selling offsets is still a significant business because it influences the market despite its very low number of sales, it is necessary to distinguish between the influence of the DSE as regulator of the offset market, and its influence as a seller of offset credits. For [competitive neutrality] purposes the commission has assessed the influence of DSE's role in its capacity as a seller of offset credits.'

What VCEC is saying here is that, yes, DSE is playing two roles — that of regulator and that of market participant — but in its assessment it only felt it necessary to consider it a market participant, and as a market participant it was not considered a significant influence on this market. I think that is a little bit strange because that participant also happens to be the market regulator, and I think that sends a clear signal to other market participants.

To round back to where I started, that is another example of where I do not think there was enough critical examination of what DSE were telling themselves and what they were telling VCEC, and I think there was a lack of oversight in that case. It is a very interesting case. It is a very interesting area, and Victoria is leading certainly the country and is considered a world leader in this field, so I think it is particularly concerning that episodes like that have happened.

The CHAIR — I am conscious of the time, so thank you very much. Mr Campbell, can your slideshow presentation be provided to us?

Mr CAMPBELL — Certainly. It is now saved on your desktop here, so you can keep that.

The CHAIR — Are you happy for us to publish that?

Mr CAMPBELL — Certainly. It is only quotes — it does not really stand alone as an exciting read for viewers — but you are more than welcome to put it on your website.

The CHAIR — There are no further questions. Thank you for giving us the opportunity to hear what you said. As I have indicated, the committee secretariat will provide you with a draft version of tonight's transcript, and, subject to your reviewing it, it will be made public shortly. That being said, thank you very much. You are free to go.

Mr CAMPBELL — Thank you all very much.

Committee adjourned.