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SENATE

SELECT COMMITTEE ON THE SOCIO-ECONOMIC
CONSEQUENCES OF THE NATIONAL COMPETITION
POLICY

**Reference: Socio-economic consequences of the national competition
policy**

FRIDAY, 26 MARCH 1999

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SENATE
SELECT COMMITTEE ON THE SOCIO-ECONOMIC CONSEQUENCES OF THE
NATIONAL COMPETITION POLICY

Friday, 26 March 1999

Members: Senator Quirke (*Chair*), Senator Crane (*Deputy Chair*), Senators Coonan, McGauran, Mackay, Margetts and Murray

Senators in attendance: Senators Coonan, Mackay, Margetts, Murray and Quirke

Terms of reference for the inquiry:

To inquire into and report on the National Competition Policy, including:

- (a) its socio-economic consequences, including benefits and costs, on:
 - (i) unemployment,
 - (ii) changed working conditions,
 - (iii) social welfare,
 - (iv) equity,
 - (v) social dislocation, and
 - (vi) environmental impacts;
- (b) the impact on urban and rural and regional communities;
- (c) its relationship with other micro-economic reform policies; and
- (d) clarification of the definition of public interest and its role in the National Competition process.

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Committee met at 9.39 a.m.

CHAIR—I welcome everyone to this public hearing on the socioeconomic consequences of the national competition policy. For the record, this committee was first appointed by the Senate on 1 July 1998 and was subsequently reappointed on 10 March 1999. The terms of reference agreed by the Senate require the committee to inquire into and report on the national competition policy, including: its socioeconomic consequences, including benefits and costs to unemployment, working conditions, social welfare, equity, social dislocation and the environment; its impact on urban and rural and regional communities; its relationship with other microeconomic reform policies; and clarification of the definition of public interest.

The committee is required to present its report on or before the last sitting day of June 1999. However, I make the observation that, due to the breadth of the terms of reference and the volume of submissions received, the committee is likely to continue its inquiries after that date, subject to agreement of the Senate.

Before we commence taking evidence today, let me place on the record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence which is given before it. Parliamentary privilege, for those who have not appeared before a committee before, means special rights and immunities attached to parliament or its members and others necessary for the discharge of the functions of the parliament without obstruction and without fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by him or her before a Senate committee, or any other committee of the Senate, is treated as a breach of privilege and so you are accordingly protected.

I now welcome the Treasury witnesses.

[9.40 a.m.]

GREAGG, Mr Peter Edward, Manager, Market Structure Unit, Structural Reform Division, Treasury

McKISSACK, Mr Adam, Manager, Communications and Energy Markets Unit, Structural Reform Division, Treasury

MASTERS, Ms Nicole, Acting General Manager, Structural Reform Division, Treasury

POTTS, Mr Gary Ronald, Executive Director, Markets Group, Treasury

CHAIR—We prefer all evidence to the committee to be given in public, but should you at any stage wish to give part of your evidence or answers to specific questions in private, you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement, at the conclusion of which we will invite committee members to ask you questions.

Mr Potts—Thank you, Mr Chair. We made a submission to the committee in November last year, and you will have a copy of that submission. At this stage, I would wish to make no further comment by way of an introductory statement in relation to the information that is provided in the submission. If you so agreed, we would be happy to respond to questions from members of the committee.

Senator MARGETTS—In your submission, you refer to evidence that suggests national competition policy is delivering benefits. How do you go about ascertaining those benefits, and are you also hearing and ascertaining what the costs may be to balance out whatever those benefits may be?

Mr Potts—We very much have an interest in what the benefits of structural change in the economy are generally—and not just competition policy. I think one of the challenges for economic analysts is to actually identify what the specific benefits have been of particular changes.

I think we in Treasury would begin by looking at what we would call the macroeconomic level to see whether there has been any change in the performance of the economy as a result of structural change that is taking place. That structural change can relate to a number of factors. It can relate to the impact of government policies, whether that be competition policy or other microeconomic reforms. It can also relate to other developments that are occurring within the market economy itself, if you like, without necessarily the influence of government policy. I am thinking here, for instance, of technological change. As you would be aware, a lot of attention has been given to what the impact of technological change might have been in recent years—not only in Australia but in other countries—in relation to the impact of information technology systems in particular.

If we look at what the impact of those changes as a whole might be, the macroeconomic indicator that we would focus on is what is happening to productivity growth in the economy as a whole. By ‘productivity growth’, I mean the increase in output for any given input re-

sources. We have been looking at this issue for a number of years for the obvious reason that, if you are pursuing microeconomic reform policies, you are very interested in being able to demonstrate that there are benefits in those policies. If you cannot demonstrate the benefits of those policies, you have to question whether going down that particular track is worth while.

But if we look at the performance of the economy during this decade of the 1990s, I think there is strong evidence—and this is based on analysis, not only by Treasury but by other organisations such as the Reserve Bank—which suggests that there has been a structural improvement or a structural change in the productivity performance of the Australian economy. During the 1990s, productivity growth—

Senator MARGETTS—Just to clarify that, are you talking about labour productivity or other sorts as well?

Mr Potts—This is multifactor productivity—what is happening to productivity in the economy as a whole.

Senator MARGETTS—Do you have those measures?

Mr Potts—We can provide you with some information on the figures in relation to both multifactor productivity and labour productivity. I think the Reserve Bank has done quite a deal of research on this. Our average productivity growth in the 1990s has been 2.3 per cent.

CHAIR—Per annum?

Mr Potts—Per annum.

Senator MARGETTS—Will you be talking about other elements as well?

Mr Potts—No. I was going to compare that with our performance in earlier periods. Of course, in examining figures like that, you need to be careful to make sure you are making like comparisons.

Senator MARGETTS—How do you pick out which bits are associated with national competition policy?

Mr Potts—What I was saying before was that it is difficult to identify what the particular benefits at a macroeconomic level might be in relation to individual elements of policy, and even policy as a whole, because there are other changes—structural changes—occurring in the economy as a whole. I think some indication can be given by the performance of the economy in this decade—when we have seen the influences of microeconomic reform policies in place in the economy—compared with what it has been in previous periods. The evidence that is accumulating is that there has been a structural improvement in our productivity performance. I think the Reserve Bank puts it down to about a 0.3 per cent per annum improvement in our productivity growth performance. That is looking at the issue at a macro level for the economy as a whole. As I said, we are not trying to—

Senator MARGETTS—It is looking at one element at a macro level?

Mr Potts—Yes. We are not trying to identify what the impact of competition policy *per se* might have been on that improvement in our productivity growth performance, because that improvement is the result of a number of influences—and not only competition policy, which you are specifically looking at, which came out of the 1995 agreement between the Commonwealth and the states. In fact, you could probably argue that most of the effect of that particular set of policy measures is still in front of us, because the states in particular are in the process of implementing the policy changes that flow from the competition policy agreement. But a lot of the sorts of policy aspects which are covered by the competition policy agreement framework were being put in place by the states before the agreement was reached with the Commonwealth. Take the area, for instance, of public utilities—electricity is probably the clearest example—where the state governments were moving in the late 1980s and early 1990s to improve the performance of those utilities by corporatisation and other measures.

Senator MARGETTS—Can I just throw a spanner in here. Some would say the productivity of the catering here has improved, but I would say there are probably longer lines and that we wait longer. You are concentrating on productivity. I am assuming you are going to go into other elements but, given that the government elements of competition policies are a lot about what people are going to get from the government or what benefits they get from existing services or programs, if you are concentrating on productivity, have you also looked at whether people are actually getting a better, more responsible service. We all know that if you have got fewer people answering phones then the productivity of each person improves on paper, but have you gone to that extent of saying, ‘Yes, this is a benefit,’ except in the narrow terms of productivity alone?

Mr Potts—No, we have not gone into that sort of detail to attempt to measure the quality of services. The Australian Bureau of Statistics, in measuring what price changes occur in the economy, for instance, attempts to take into account the impact of changes in the quality of the goods that are being produced. If you take, for instance, a motor vehicle—

Senator MARGETTS—Can I just clarify something here. You do not have a unit within Treasury that actually looks at some cost-benefit in terms of the elements of cost-benefit? Do you have a cost-benefit unit?

Mr Potts—No, we do not have a cost-benefit unit *per se*. We have a small area of about four or five people that is responsible for competition policy and the role of that unit is to advise the government on the policy framework in relation to competition policy. For instance, if you look at the policy that has been put in place then our responsibility would have been to advise the government on what that framework ought to be. Of course, it is a matter for government to decide what it wishes to pursue. But the framework that has been put in place is designed to consider more than purely economic questions. It is designed to cover other things as well. There is a public interest test that has to be applied by governments in reviewing individual areas of regulation, for instance. That public interest test really covers a range of things apart from economic issues. I can read some of those out, if you wish.

Senator MARGETTS—No, that is all right. That is in the actual document. Are you saying this is a role of Treasury?

Mr Potts—No, the role of Treasury was to establish that framework.

Senator MARGETTS—No, that is okay. I am just trying to work out what Treasury knows and measures in relation to competition policy, because when you use the word ‘benefits’ I am trying to work out how you ascertain that it is a benefit or to whom it is a benefit. Is productivity per se a benefit to the wider community if what they are wanting is improved services?

Mr Potts—Productivity growth is a benefit to the wider community because it is a sustainable basis on which real wage increases can be paid. In the short term you can have real wage increases which are not based on improvements in productivity, but they will result in inflationary pressures in the economy and there will need to be an adjustment to policy in order to bring inflation back to reasonable levels. So you could have higher productivity growth. It provides the most sustainable basis—apart from long-term shifts in the terms of trade for individual countries—on which real wage increases can be provided. Indeed, if we look at the performance of the economy in recent years, I think that has been one of the features. We have seen stronger productivity performance and we have seen real wage increases which are being backed by that better productivity performance. At the same time, we have seen inflation remain low in the economy for that reason because the real wage increases have been backed by better performance in the economy.

Senator MARGETTS—Can I just go on to the element of provision of community services. In your submission on pages 24 and 32, you talk about the removal of cross-subsidies. Can you cite any cases of where this has been done and replaced with community service obligation or similar compensatory mechanisms, and whether you know whether this is working or not?

Mr McKissack—Which particular example are we looking at?

Senator MARGETTS—Your submission on pages 24 and 32, where you talk about the removal of cross-subsidies.

Mr McKissack—I think we could certainly say, in the case of the telecommunications market, for example, that it has not so much been a removal of cross-subsidies as a look at different ways of providing that. For example, there has been the introduction of a levy on industry to pay for the USO. It has been more a case of better identifying what cross-subsidies are and looking at ways of explicitly funding those. In the case of telecommunications, we have done that through a levy on all the major players in industry.

Senator MARGETTS—One could argue that the telecommunications case is a specific one because that element of the removal of cross-subsidies has been very public. There has been a political imperative to at least be seen to be looking after community service obligations. Are there examples of other cross-subsidies being challenged in this whole process?

Mr Potts—Electricity is an area where cross-subsidisation has been reduced to some degree. As our submission indicates, there have been substantial reductions in electricity tariffs for corporate users of electricity, who previously paid more for their electricity in economic terms than was justified. So there was an element of cross-subsidisation from—

Senator MARGETTS—Which might mean that the more expensive provision in other areas might go up.

Mr Potts—Yes. The intention with electricity reform is that the direct advantages or benefits of reduced tariffs will spread from large corporate users down to individuals. I think the year 2002 is when individuals will see direct reductions in tariffs.

Senator MARGETTS—Are there any community service obligations built into those kinds of changes?

Mr McKissack—It varies from state to state. It is hard to give a general answer to that. Each state has its own cross-subsidies and is dealing with those in its own way. It is hard to say in general that there is one way in which it is being dealt with.

Senator MARGETTS—Is there no requirement, necessarily, that you replace a removal of cross-subsidy with a particular community service obligation? Sorry, is that a yes?

Mr McKissack—It varies from state to state and—

Senator MARGETTS—But there is no requirement under national competition policy?

Mr McKissack—No, there is no requirement.

Senator MARGETTS—So, in the process of removing cross- subsidies, there is no actual requirement for a replacement with some sort of community service obligation to make sure the levels of services for the more expensive provision are maintained?

Ms Masters—Community service obligations are a matter of policy for each particular government. Where there is a need felt to protect or offer some kind of assistance or ensure that some type of service is being provided to a certain number of people, et cetera, it is a matter for each particular government to decide and to implement.

Senator MARGETTS—Sure, but the national competition policy is a federal agreement, so they are acting on national competition policy. Might it not be that some elements of implementing some form of community service obligation might be challengeable under national competition policy?

Mr Greagg—The whole thrust of the agreements is that it is left to each jurisdiction to make decisions on how it implements the principles.

Senator MARGETTS—Do they have to apply to anyone to get these community service obligations okayed?

Mr Greagg—No, it would be a matter for the jurisdiction itself. The National Competition Council has a role in assessing each jurisdiction's performance in meeting its obligations and makes a recommendation to the Commonwealth on how well each does this. But the main thrust of the agreements—it leaves it to each jurisdiction to determine how—

Senator MARGETTS—They get a tick or a cross, depending on how well they have been seen to—

Mr Greagg—How well they meet their obligations. But there is broad scope for jurisdictions to make decisions based on how they see their own priorities.

Senator COONAN—I just wanted to take up one issue which really goes to the nub of it and that is the public interest tests. Your submission at pages 43, 44 and 45 gives a good overview. I wondered if we could explore that for a brief time. The first thing I wanted to know was: how is this interpreted between the Commonwealth, states and territories? Does it differ under NCP and the Trade Practices Act, for instance? Are there some objective criteria that everybody applies? How does it work if you are trying to assess public benefit?

Mr Greagg—The competition agreements set out the matters to be taken into account when making cost-benefit judgments. As I said before, the manner in which governments make those is purely a matter for the government concerned. The agreements list matters that may be taken into account but those matters are not intended—

Senator COONAN—They are not prescriptive, are they?

Mr Greagg—No. Governments could take more things into account. With these sorts of judgments, it is not a matter of somebody comparing two different numbers and saying the costs are this much and the benefits are this much. Most of these public policy choices boil down to being able to identify what the costs are and then the government will make a decision on whether it believes the benefits, which are often intangible, outweigh the explicit costs. As you can see from our submission, the matters that governments can take into account encompass most social policy matters including the environment and employment.

Senator COONAN—There was a recommendation of the House of Representatives Standing Committee on Financial Institutions and Public Administration which ultimately came down in favour of a recommendation that the various jurisdictions develop a common set of basic principles to apply to the public interest test. What does Treasury think of that recommendation?

Mr Greagg—I am not sure that Treasury itself has a particular view on that recommendation. I would have thought that, given all the parties to the agreements would be conscious of their own sovereignty, individual jurisdictions would have a view about how they could best apply these principles to their own circumstances, without necessarily feeling bound by what another jurisdiction might think.

Senator COONAN—But wouldn't there be some merit in the Commonwealth perhaps putting forward some common objective set of criteria instead of just broad outline principles

that might be applied? It obviously can vary enormously as to how each party might interpret what is a public benefit. It is a bit of a lottery.

Mr Potts—The NCC, of course, has a role in assessing the public interest evaluation that is done by the state governments. The NCC would be reaching a decision on whether that analysis is sufficiently robust. But it would be wrong to think that the whole process is done in isolation with no consultation or consultation between the NCC and state governments. There needs to be an ongoing process. The state governments would wish to satisfy themselves that it would withstand the scrutiny of the NCC. As Mr Greagg was saying, these are issues that fall within the sovereign responsibilities of the states. I know that some states—I think New South Wales, in particular—are moving towards developing more detailed objective evaluation criteria to be applied in certain areas.

Senator COONAN—I suppose also it is very difficult to judge in many respects how people measure benefits anyway. There seem to be a lot assumptions that there are trickle-down benefits without any real way of measuring them. Do you agree with that?

Mr Potts—No. I think in some areas you can clearly identify what the benefits are. We have given a range of those in our submission, from electricity prices through to gas prices and conveyancing costs. There is fairly clear evidence that there are benefits in relation to those particular services. What is more difficult to identify is the benefit for the economy, as a whole, because those are the first round effects. What are more important are the second and third round effects.

The second round effects are the impacts that lower prices have on consumer spending because they increase disposable income available to consumers. That also lowers business costs. Those will have a positive impact on the economy, which is what I was trying to address previously when talking about the productivity performance of the economy as a whole. In addition, I think that helps promote a more dynamic and innovative economy because there is more competition in the system. Experience shows that competition can be quite a positive influence on innovation in an economy.

Senator COONAN—I think that is right, but it is difficult to measure—

Mr Potts—Yes, it certainly is difficult to measure.

Senator COONAN—when you get into, as you quite accurately put it, the second and third waves.

Mr Potts—I could give an illustration of what I think is a potentially important secondary benefit of structural reform in competition policy. It is one which, understandably, individuals in the community would not immediately recognise. Structural reform policies have led to greater competitive pressures in the economy. We know that, and we are not alone in that; it has happened in other countries as well.

One of the effects of that has been a far greater inflation performance of the Australian economy during the decade of the 1990s. That, in turn, has meant that interest rates have been able to be kept at much lower levels than they were previously. That has had a very

significant impact on the disposable income of households because it has reduced mortgage costs very significantly. There is an example of an indirect benefit of competition policy and structural reform generally. But I am not sure whether the community would recognise that.

We, in Treasury, would certainly ascribe one of the benefits of the structural reform policies that we have seen over the last decade as coming through in lower inflation and, therefore, having some benefit in relation to interest rates and on disposable income of households.

Senator COONAN—Yes, certainly it goes with what the Treasurer says anyway. There is a paper that I have not had a chance to get but I was wondering if you could provide it. That is appendix C of the Industry Commission's staff working paper, 'The public interest test and access to essential facilities.' Do you have that available and, if so, could we have it?

Mr Potts—We could certainly provide it if it is a public document.

Senator COONAN—Thank you very much.

Senator MACKAY—I am interested in exploring the assessment you have made of the economy because it is not correct to simply assert that there is a direct nexus between national competition policy and general economic improvement. You cited the instance of a lower inflation rate and lower interest rates. Somehow you are trying to draw a nexus between that and national competition policy. I am curious as to how you can do that, given that there are no assessments that Treasury have made with regard to the impact of national competition policy per se. It seems a bit glib, to be frank.

Mr Potts—I was not trying to relate it exclusively to competition policy. I was trying to relate it to structural reform policies that have occurred in the economy over the last decade or so—for instance, the reduction in protection for the traded goods sector.

Senator MACKAY—Yes, but you drew the nexus. You said that national competition policy assisted structural reform, which therefore resulted in a lower inflation rate.

Mr Potts—Yes, it is one element.

Senator MACKAY—That is right. However, there is no empirical evidence to back this up, is there? I think that was the point that was being made before.

Mr Potts—I think the empirical evidence is, as I highlighted at the beginning of our discussion, that there has been a much better productivity performance of the economy in the 1990s. If you look at the macro level of the economy, there has been a much better productivity performance in the economy.

You can supplement that by saying, 'Let's look at what has happened to prices in some areas where previously there was regulation and which, for one reason or another—whether it be competition policy or for other reasons—have been deregulated or put on to a more corporatised basis.' There is evidence that, for instance, electricity prices have fallen quite

substantially. Lower electricity prices mean that business input costs fall and that, therefore, allows them either to reduce their prices or increase their output in those areas. Competition policy is also designed to increase competition in the economy.

Senator MACKAY—I understand that. There are externalities in terms of the macro-economic circumstances, as you know. We have got a massive current account deficit that is topping six per cent of GDP. We have got a situation where there is potential overheating within the economy which has got a consequential push in relation to interest rates. They are externalities in relation to the economy.

What we are attempting to find out is what modelling Treasury has done, if any, in terms of the impact of the national competition policy's contribution to productivity. It is also not fair to say that national competition policy has delivered a lower pricing regime in regional Australia, for example. It has not. It is impossible to have a competitive regime in many regional and rural communities. Their prices have not gone down; their prices have gone up.

Mr Potts—In relation to your last point, the Productivity Commission is currently undertaking an inquiry on that very issue. So we are not in a position to provide any information on that—not that we have any information—because the Productivity Commission itself is looking at that very exhaustively. I was only trying to address the issue in a broad macro-economic sense as one of the indicators of whether there has been an improved performance in the economy and then look at the reasons why that might have occurred.

In addition, a few years ago, the Productivity Commission did some modelling of the kind that you are talking about to estimate what the benefits of competition policy reform might be—we have referred to those in our submission. Their modelling suggested that, in time, there would be an increase in GDP of about five per cent or \$23 billion in 1993-94 prices.

We are not alone in having done that sort of modelling. The OECD, the Organisation for Economic Cooperation and Development, is taking a particular interest in competition policy, because many countries are realising that now that the tradeable goods sector has been deregulated, if you like, you need to look at other parts of the economy which, in some ways, account for a larger proportion of the economy. So they are taking a very keen interest in that. They did a study of the five major countries in the OECD and provided evidence of quite substantial benefits from deregulation of certain areas. For instance, in the United States when the airline industry was deregulated in the early 1980s prices fell substantially, but the output of the industry actually increased quite substantially.

Senator MACKAY—Yes, and there was a huge impact on the safety regime as a result. Anyone who flies in the United States takes their life in their hands, as you know.

Mr Potts—But the OECD estimated in its modelling work that there would be something like a five per cent increase in GDP in those countries concerned if they pursued competition policy reform. Modelling done by organisations in Australia and overseas suggests that there are substantial gains to be made from competition policy reform.

Senator MACKAY—What modelling has been done in terms of the impact of national competition policy in regional Australia?

Mr Potts—I cannot answer that question. We have not done any modelling in Treasury, but what the Productivity Commission might be doing in relation to its inquiry I am not sure. One of the difficult issues will be to identify what is attributable to competition policy and what is attributable to other developments in the economy.

Senator MACKAY—Correct, and that is the point I am attempting to make, that there is no empirical way that you can actually determine what the contribution of national competition policy is to general economic growth.

Mr Potts—Not with absolute certainty, but you can still make estimates.

Senator MACKAY—Have you made any estimates?

Mr Potts—No, we have not. I quoted the evidence that we are aware of in relation to that issue.

Senator MACKAY—Which is from the Productivity Commission and from the OECD?

Mr Potts—Yes, the Productivity Commission and the OECD.

Senator MACKAY—Did the report the Productivity Commission did previously, where it actually estimated five per cent growth in GDP, look at the impact of regional Australia, or was that a macro assessment?

Mr Potts—I could not answer that.

Mr Greagg—It was across the whole economy, but looking at each particular sector.

Senator MACKAY—Did it look at regional Australia in particular?

Mr Greagg—It did not look at impacts on particular regions although, as Mr Potts was saying, the current inquiry the PC is undertaking is looking at the impact of competition policy on particular regions.

Senator MACKAY—Right. I do not know if we have got a copy of that. Perhaps, Chair, we could get a copy.

Mr Greagg—What were you after? They have not reported yet.

Senator MACKAY—No, I am talking about the previous report that Mr Potts is alluding to. Also, have we got the OECD study?

Mr Potts—We can make that available.

CHAIR—Thank you, that would be good.

Senator MACKAY—In terms of drawing nexus here, what about employment? What impact has NCP had on employment outcomes?

Mr Potts—The Productivity Commission modelling may have addressed that issue. I am not aware of that. We have not done any modelling on that. I can only talk about it in a qualitative sense, which would be along the lines of what I have mentioned previously. We would say that necessarily there will be some reductions in jobs in some firms as a result of competition policy, but the question is what happens more generally. Even in the same industry it may be that employment growth could be stronger than before. If you take the telecommunications industry, there has been quite a significant reduction in the number of employees in Telstra, for instance—

Senator MACKAY—Correct.

Mr Potts—but for the industry as a whole employment has increased, or certainly has not decreased.

Senator MACKAY—Yes, but here again that is taking a general view on telecommunications. In terms of the removal of the cross-subsidies and the impact on services in telecommunications, I was amazed that that example was used because there has been a substantial diminution of services, particularly in regional Australia, as a result of these initiatives, which goes to the debate we are having in relation to Telstra at the moment.

I find it unbelievable that Treasury has not undertaken a study. I appreciate you may not have been given this role, so I am not suggesting it is a fault within the department. The Treasurer has to determine whether he wishes it to be done. But there has not been any modelling in relation to NCP on the economy in aggregate, and specifically sectorally and regionally.

Mr Potts—The Productivity Commission did do modelling of the impact on the economy, as we mentioned.

Senator MACKAY—But there is a unit in Treasury that is not tracking it. As I said, it is not necessarily within your purview, the direction has to come from the Treasurer.

Mr Potts—I thought you were particularly interested in the impact on the rural sector.

Senator MACKAY—No, not necessarily. I am just using regional as an example.

Mr Potts—I cannot add anything to what I have said—that modelling has been done elsewhere. We are not modelling what is happening precisely at the moment. We can look at the issue in a qualitative sense of what is likely to happen. We would see it as a positive influence for economic growth and for employment. The exact impact on employment would depend on how the benefits of increased productivity growth are shared, in other words how they are shared between real wages growth and increases in profits. But overall the impact would certainly be positive. We have no reason to believe otherwise.

However, we would not say that there will not be some areas where job opportunities, for instance, might be fewer than before. But maybe that is due to other changes that are occurring in the economy. If we take the rural sector, for instance, we have seen a very substantial fall in employment in rural industries in the last 20 or 30 years, but that was before the advent of competition policy. If you look at the longer perspective, right through this century, the fall is even greater. We have seen a very large increase in employment in the services sector in Australia over that period.

Senator MACKAY—But the evidence that we have before us is that national competition policy is actually a proactive factor in that. You are asserting that national competition policy—

Mr Potts—What we are saying is that the national competition policy was put in place for the benefit of the country as a whole. However, we recognise, and the policy framework recognises, that there will be adjustment costs, that there will be other factors and economic factors to take into account in determining to what extent policy should be changed, and that specific provisions are made to allow for those things. For example, in the public interest test, how is it to be applied? We have discussed that, and also the scope that exists for governments, particularly state governments, to provide structural adjustment assistance.

The Commonwealth government is making very substantial competition payments to the states which provide them with the capacity to provide structural adjustment assistance to particular industries that are affected by the changes. I think that is already happening. Queensland, for instance, is doing that, and I think Victoria as well.

Senator MACKAY—I have already heard evidence that it is extremely patchy: the way the provisions of national competition are being applied is very patchy and varies greatly on a state-by-state basis. The point that Senator Coonan was making is that there needs to be some consistency here. What we have got in response from Treasury is jurisdictional questions which, in a public policy sense, is utter nonsense. The government wants to change the entire tax system which will have a major impact on every jurisdiction. I do not see why the jurisdictional argument matters.

Mr Potts—Tax policy is a Commonwealth responsibility. I think that is the fundamental difference.

Senator MACKAY—I see, so national competition policy is not?

Mr Potts—No, because what we are doing is dealing with issues which are the sovereign responsibility of the states.

Senator MACKAY—So you are saying that the Commonwealth cannot reset the public interest test, that it cannot actually standardise it along the lines that Senator Coonan was talking about.

Mr Potts—Only with the agreement of the states.

Senator MACKAY—Has there been any attempt to do that from the Commonwealth's perspective?

Mr Greagg—No.

Mr Potts—To my knowledge there has been no approach from the states.

Mr Greagg—These agreements came out of some COAG meetings, meetings of all Australian governments, and so to change them would be a matter for all Australian governments. The Commonwealth has got an interest in the performance of the economy as a whole.

Senator MACKAY—Yes, I appreciate that, but what you are suggesting is that it has got to be initiated by individual states. Is that what you are proposing?

Mr Greagg—Applying the public interest test, as I said before, is a matter for the states concerned.

Senator MACKAY—Why wouldn't the Commonwealth initiate it? What is prohibiting the Commonwealth from initiating a change in the public interest test as suggested by Senator Coonan? Why couldn't the Commonwealth do that? Of course it could.

Mr Potts—The Commonwealth could do that if it believed there was merit in doing so.

Senator MACKAY—That is correct.

Mr Potts—But in doing that it would need to obtain the agreement of all the state governments to amend the current arrangements. The question is whether the current arrangements provide sufficient flexibility to allow the evaluation to be done in a proper way. I think we would argue that it does.

Senator MARGETTS—Are you suggesting there is no head of power for the Commonwealth?

Mr Potts—Some of these areas are state government responsibilities. Applying regulations to state government utilities—for instance, what the regulatory arrangements are there—is a matter for state governments, it is not a matter for the Commonwealth. That is why there is an agreement between the Commonwealth and the states in this area.

Senator MACKAY—I have just one last question, Chair. I would also suggest that we might be able to get a bit more of a briefing from Treasury in terms of the modelling they used to determine productivity. You cannot gloss over in terms of higher wages without looking at disaggregation sectorally and by gender.

May I ask one last question? Local government is very concerned about national competition policy. We have received a number of submissions from local government. It is not simply local government's concern; they are also representing their constituency, not exclusively but particularly in regional Australia. Here again this goes to the patchy

application of the national competition policy state by state. Are you aware of these issues that have been raised by local government or local government's concerns?

Mr Greagg—Not specifically, Senator. What are they?

Senator MACKAY—What are they? You have no knowledge of the concerns of local government in relation to national competition policy, yet you have a unit of five people working in Treasury?

Mr Greagg—Yes, that is right, Senator.

Senator MACKAY—That is unbelievable.

Mr Greagg—It is a question of local governments being a creation of state governments, and we do not deal directly with local governments.

Senator MACKAY—That is not the question I asked. I am asking whether you were aware of the concerns of local government, and you say you are not aware.

Mr Greagg—The only concerns we are aware of are in relation to those parts of the agreements that require local government businesses to be corporatised and the incidence of Commonwealth taxation on those corporatised bodies.

Senator MACKAY—So you are aware of concerns from local government?

Mr Greagg—We are aware of those concerns. I do not know—you were mentioning other concerns?

Senator MACKAY—Yes, there are a number of other concerns. I suggest that you actually have a look at the submissions to the committee from local government—especially if you have a unit employed within Treasury to deal with national competition policy. You might have a bit of an interest in it.

Senator MARGETTS—Mr Potts, you have mentioned that productivity improvements in Australia could be or may be associated with competition policy because they are happening at the same time, but it is hard to disaggregate it. How about the equality index in Australia? How is that going? How much do you connect that with competition policy? We know that there are different elements within Australia who are faring better and some faring worse. How would you associate the national competition policy with the equality index?

Mr Potts—I am not familiar with the equality index.

Senator MARGETTS—Sorry. Each economy has some kind of indication of whether or not they are getting a greater or lesser gap between rich and poor in service provision, benefits, economic ability to survive.

Mr Potts—That would depend on what aspects you were thinking of, whether it was by income levels or by regions or whatever.

Senator MARGETTS—As you know, income levels by themselves do not usually give the full story. There is usually some sort of welfare index that actually gets the totality. During the time that the national competition policy has been operating, how have the gaps between the better off and worse off in Australia gone?

Mr Potts—I cannot give you information on that. The information would be available, I think, through the ABS on income distribution levels and the numbers—

Senator MARGETTS—Doesn't Treasury—

Mr Potts—I do not have the information myself.

Senator MARGETTS—Okay.

Mr Potts—All we can provide, I think, is information on how many people fall into different income levels, for instance. But we could not provide any information as to what you would attribute any trends that have occurred—

Senator MARGETTS—But you are happy to attribute trends in productivity. I am really concerned that if there are other aspects of the macro economy that are occurring at the same time, that you are happy—without being able to disaggregate it—to attribute national competition policy to improvements in productivity but unable to attribute any connection between, say, growing inequalities.

Mr Potts—Thinking of it conceptually, I am not sure that competition policy would bring that about in any case.

Senator MARGETTS—All right. Over time, it would be very good for you to read the submissions that we get and perhaps come back.

Mr Potts—I am happy to read the submissions.

Senator MARGETTS—You also made a statement about greater competitive pressure in the economy. We have heard, and you have agreed, that there are differences in the pricing for regional and, say, urban business consumers of services and so on—some get cheaper rates and some get more expensive rates.

If there are greater competitive pressures in the economy, could you extrapolate what the benefits are? Are there any costs in terms of choice availability? How about convenience and service? Are we getting a clear benefit for consumers if what we are wanting, and if the overall aim—I am not entirely sure what the overall aim of competition policy was—was to benefit consumers? Are you aware of what the impacts might be on choice—for instance, on goods that might not have enough demand so that little shops go out of business? People might have to travel further to get to a big shop rather than to the small shops which have closed down. How about service, just in time, so that anything like non-standard plumbing has to be made to order rather than be available? Have you done any analysis of whether, as a consumer—if the prime benefit from Treasury's point of view would be to benefit, say, the

consumer—it is just price you are looking at, or have you looked at the wider elements of what a consumer might be looking at?

Mr Potts—No, we have not looked specifically at that issue, or in any way attempted to model it, for instance. We are looking at what the impact on the economy overall would be of these policies rather than what they might be in relation to individual areas. At this stage, there is really not much that I could say there. Looking at a macro-economic level, we have seen inflation at very low levels in the last seven or eight years, and that is due to a number of factors. I would not attribute, by any means, all of that to competition policy or structural reform. Nonetheless, I think it has been one factor in why price increases have been very modest over that period. That is a benefit to consumers, but I would not say that all structural change that occurs in the economy is necessarily completely—

Senator MARGETTS—But if you now have to catch two buses to get to the place to buy the goods, even if they are cheaper, is that a benefit to the consumer?

Mr Potts—It depends on what price the consumer is paying for the product, I suppose. These things can be a trade-off, and the consumer might think that a little less convenience, for instance, is worth a 10 per cent reduction in price.

Senator COONAN—Very briefly, on the same theme, deregulation and expanded competition—I think you are saying, and I am agreeing with you—certainly have the potential to deliver what might be called meaningful dividends to regional and rural Australia. A couple of examples that have come to my attention are the rail transport sector where freight rates for the movement of grain in Western Australia have fallen by more than 20 per cent in real terms since competition was introduced in the 1990s. Freight rates between Melbourne and Perth have fallen by 40 per cent since the mid-1990s, et cetera, and deregulation of the Western Australian gas sector in the mid-1990s has resulted in price reductions of 50 per cent for some industrial users. Gas access charges are projected to fall by about 60 per cent by the year 2000. That, to me, seems to be some of the sorts of benefits that are being advocated by competition and deregulation.

I think where the difficulty arises is that where there are benefits it is said to be because of competition, and where there are problems one then blames competition. The causes are obviously much more complex where there are problems in rural and regional Australia. I am wondering how you deal with other factors such as changes in economic platforms, market forces, demographic bases of regional Australia and, indeed, technological change that has had such an impact on services such as banking. It is a terribly complex problem. I am interested to hear your view about how you actually go about measuring the different factors and where one really pops up and says, ‘Yes, it is competition policy’; or is it only ever a contributor?

Mr Potts—We would not claim to have the expertise which would allow us to separately identify those things. Our view is that these changes are happening inexorably, if you like, in Australia. And not only now; they have been happening for decades.

Perhaps the process has intensified somewhat because of the increasingly globalised nature of the world economy, which means that economic forces are being transmitted a lot

more quickly between countries than before. So the choice, in a way, is whether we choose to keep pace with those changes that are occurring internationally, recognising that, in doing that, there certainly are adjustment costs and there is a clear role for government to respond to those adjustment costs and provide assistance where it is necessary. But whether you should be attempting to stand in the face of those changes and be denying them, if you like, I think it is a clear issue for policy really.

Senator COONAN—Well, it is an interesting issue as to what extent you should intervene from the government's point of view.

Mr Potts—Sure.

CHAIR—You mentioned very early in the piece that either your assessment or someone's assessment of productivity increases throughout the 1990s was about 2.3 per cent per annum. I wonder if you could tell us where those figures came from and who is responsible for them.

Mr Potts—Those figures would be in the material produced by the Treasury and it would be based on material released by the Australian Bureau of Statistics. It would be taken from the national accounts data for the Australian economy during the years in the 1990s.

CHAIR—You made the comment that much of the benefit of competition policy has not yet flowed through. In fact, I think you made the comment that state governments are only just starting to wind up these sorts of processes, literally as we speak. So what assessment have you made for future productivity increases that will be the result of competition policy? What is the figure for that?

Mr Potts—We have not attempted to forecast what the improvement in productivity performance might be as a result of competition policy for the reasons that I mentioned before. The 2.3 per cent improvement in productivity is a measure for the economy as a whole and reflects a number of influences, including policies that relate to structural reform.

I think the only thing we could say is to refer again to the modelling work that was done by the Productivity Commission, which attempted to measure what the increase in GDP would be as a result of the competition policy reforms. I think it was a figure that reflected the full impact of those reforms once they are in place, which is still a number of years ahead.

CHAIR—That is still five or six years old now, though, is it not?

Mr Potts—That estimate was done in 1993-94, I think. It would be a matter for the Productivity Commission as to whether they could provide any additional information in relation to the modelling that was done.

CHAIR—Thank you, everybody. We will break now until 10.55.

Proceedings suspended from 10.38 a.m. to 10.55 a.m.

COPE, Ms Deborah, Deputy Executive Director, National Competition Council

SAMUEL, Mr Graeme Julian, President, National Competition Council

CHAIR—We do prefer all evidence to the committee to be given in public, but should you at any stage wish to give part of your evidence or answers to specific questions in private, you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement, at the conclusion of which the committee will ask you questions.

Mr Samuel—Thank you, Chairman. By way of a brief introduction, over the past two or three days, we have forwarded to members of the committee via the secretariat the booklet entitled *National Competition Policy: some impacts on society and the economy*. For those who have had a chance to look at that, you will find it is very similar to the submission that we put in but I ask that it be incorporated into the material that is before the committee, because it is a useful reference point. I have also taken the liberty, over the past 24 hours, to forward a summary of that, which is a brochure that we have distributed publicly, which has the same title. It is a very brief summary of what is contained in the booklet.

I will make some very brief opening comments. I think it is important to understand that competition policy is not a new phenomenon in this country. The current national competition policy is substantially an extension of the policy established in 1974 with the introduction of the Trade Practices Act. That act, as we well know, prohibited anti-competitive behaviour by business enterprises unless they could demonstrate a public benefit in such behaviour continuing.

However, the Trade Practices Act had three important limitations constitutionally imposed: it did not cover government business enterprises; it did not cover unincorporated businesses operating within a single state border; and it did not cover anti-competitive behaviour specifically exempted from the Trade Practices Act by state or territory exempting legislation.

The national completion policy is in many respects a logical evolution or extension of the 1974 Trade Practices Act. All governments in Australia agreed in 1995 to set aside those three limitations—those three exemptions—to subject previously exempted anti-competitive behaviour to the disciplines of the Trade Practices Act unless it could be demonstrated that the public interest warranted such anti-competitive behaviour continuing.

I must emphasise that both the Trade Practices Act and its evolution under the now competition policy have comprised a balancing of economic accountability with social responsibility. This occurs through the presence and intervention in the application of competition policy of the public interest test—and just for reference purposes, that is summarised in a box that appears on page 6 of this booklet and, of course, summarised in our submission.

The application of national competition policy was never going to be easy. When you seek to change behaviour or remove protections or exemptions that have been in place for decades, then, inevitably, some sections of the community will pay a cost as a consequence

of the change and those whose protection or exemption is being removed will resist using the usual processes in the political environment.

On the other hand, significant benefits will flow through to the wider Australian community as a consequence of these reforms. These benefits are now beginning to be realised, and they are discussed on pages 7 right through the green pages in this booklet and, in particular, very specific ones are enumerated in the box B on page 9 of the booklet. But all this highlights the task of governments recognising the ultimate benefits to the wider Australian community. How do we deal, firstly, with the costs of change imposed on some sections of the community and, secondly, the resistance by vested interest groups whose protections or exemptions might be removed?

Let me deal firstly with the costs. We have to recognise that the changes occurring in society and in the economy generally are the result of a large range of factors: technological change, global influences, demographic changes and the national competition policy. We deal with those in a number of ways. Let me list just four of them. The first is the application of the public interest test, the national competition policy and the various tests that I have described before.

The second is the retention or extension and the targeted application of community service obligations. National competition policy does not require the reduction of services. It does not require, necessarily, the reduction of CSOs. What it requires is that they be transparent, targeted and do not seek to overcome or overwhelm the broad tenet and extension of competition policy.

The third is structural adjustment assistance, which can take many forms. It can take the form of transitional change, of providing financial assistance for those that are undergoing change or of providing information, relocation, retraining and reskilling. That assistance is available. It is provided for under national competition policy. It is a matter of policy by governments as to how and when it is applied. However, I should note that, under the competition policy agreement, \$16 billion is paid by the Commonwealth to the states and territories, giving them the flexibility to provide structural adjustment assistance should it be appropriate, having regard for all the economic and social issues that are involved in change.

Let me deal with the other area. I have dealt with the costs that are incurred by the community. But there are vested interest groups which will, using appropriate political processes, resist change when it is being imposed upon them, particularly when that change involves the removal of protections or exemptions from normal disciplines of competition. In the case of vested interests we need to separate out those who have a genuine case for feeling aggrieved by change and deal with those appropriately in terms of the socially sensitive issues I have talked of before—the issues of public interest tests, community service obligations and structural adjustment.

But we need to separate those from the vested interests who are simply seeking to maintain their privileged positions. Those groups will clearly mount concentrated campaigns. Those campaigns need to be countered by leadership, information and communication to the community, focusing on the privileges being enjoyed by those vested interests and, equally,

the cost being incurred by the community as a result. It is by this process that governments can seek to empower the consumer over vested interest groups.

In conclusion, this national competition policy is a balance between the goals of economic efficiency, social responsibility, equity and fairness. If the policy is applied as it was intended, as agreed by governments in 1995, it will achieve the appropriate balance of those goals. The NCC has been directed and mandated by the Council of Australian Governments and by those agreements to achieve that balance. We welcome this inquiry and are anxious to assist in its deliberations in any way appropriate.

CHAIR—Thank you. Ms Cope, have you anything to add?

Ms Cope—I have nothing to add at the moment.

Senator MARGETTS—I will start with your comments about interest groups in privileged positions. Which kind of privileged groups or vested interest groups are you referring to?

Mr Samuel—The broad range of extensions of the Trade Practices Act that have occurred cover a range of areas—the professions and aspects of business. They cover business enterprises that have had monopoly positions for decades. Those monopolies are being removed in the interests of providing some competition and more efficiency. We are talking about the restructure of government business enterprises by the application of principles of competitive neutrality.

In a range of those areas there have been specific exemptions from the application of competition. I do not want to pick any particular group out, but one of those groups I talked about is the professions. The professions have themselves undergone substantial reform over recent years in removing some of those areas that have traditionally surrounded the operation of professions, for example restrictions on advertising, price fixing arrangements, restrictions on who might enter the profession and the like. There are those who will have a view that some of those restrictions are appropriate to preserve the professional ethic or the culture of the professions. There are others who will express the view that those sorts of protections are no more than perpetuation of cartels which seek to disempower the consumer in favour of the interest group concerned.

A matter which is not currently a matter of the NCC but which is receiving the attention of the ACCC is the issue of specialist colleges in the medical profession. There are two different views on that. Some take a view that specialist colleges are designed to ensure the maintenance of very high standards for those who can enter the profession and describe themselves as a particular form of specialist. On the other hand, I heard someone yesterday at a health conference describe them as cartels which ensure there is a restricted entry into those areas of the profession so that high incomes are derived by members concerned—in the order of between \$400,000 and \$700,000—and that the consumer was paying for that. They are the sorts of issues that are now subject to the normal rules of competition disciplines.

Senator MARGETTS—The range of groups who have expressed concern to this committee, however, includes a wide representation from local government, which basically represents Australia in general. It also includes the professions, in terms of health coverage and so on, and a range of groups like potato farmers from Western Australia, dairy farmers and so on. Do they all fit under that banner of vested interest?

Mr Samuel—No, clearly not.

Senator MARGETTS—So some of the criticisms are okay, but some of them are just from vested interests?

Mr Samuel—Let me deal with that in a moment. First, let me emphasise, again, that with respect to the groups that are having exemptions and protections removed, it is necessary to separate those that have vested interests and that are simply seeking to protect those vested interests without regard to the interests of the wider community from those that have a genuine case to be considered in terms of the costs that will be incurred by them as a result of change. Many of them are not vested interest groups. Many of them are simply part of the broad structural changes that are occurring in society and the economy generally. Local governments are not vested interests; local governments are part, if you like, of the structure of government in Australia, which, at all levels, is undergoing significant structural change as the consumer demands—and as governments respond to that demand—more efficiency in the provision of government services.

We do, though, need to address the criticisms. Perhaps I am going on; do you want me to stop at this point? Do you want to address a specific issue on local government? I am happy to do that if that is appropriate.

Senator MARGETTS—Let us talk about some aspects of the reviews. This is certainly something that local government have been involved in. They are involved in revenue issues as well. There has been some criticism of the transparency of reviews—that they are not all undertaken by independent bodies. Is this so? What kinds of criticism have you heard? Is there a shortage of qualified people who are able to do these reviews? What could, or should, be done about this?

Mr Samuel—Thank you for those questions. We are aware that some reviews have been criticised for lack of independence, lack of transparency and lack of consultation with all relevant stakeholder groups. As a result, there has been concern about the outcomes of reviews. In some cases outcomes of reviews are not even disclosed and legislation may or may not be implemented without necessarily disclosing the full contents of a review.

In the very early stages of national competition policy the National Competition Council wrote to all governments advising them that, in our view, reviews under the national competition policy needed to satisfy a number of criteria. They needed to be independent, transparent, rigorous and objective, they needed to involve and allow consultation and submission by all relevant stakeholder groups and the analysis that took place needed to be rigorous, transparent and objective. We reiterated the advice we gave in that letter to governments only recently, just prior to Christmas.

The National Competition Council's position is that it does not interfere with review outcomes. It involves itself in two elements. One is the review process to ensure that those elements of independence and rigorous transparency are all adhered to. The only time we will ever involve ourselves in the outcome of a review is if the outcome does not bear any reasonable relationship to the material that is being put before the review and the material that is being analysed by the review. If a reasonable person could not have reasonably come to the conclusion that is set out in the review itself, based on all the information put to the review, we would then be asking questions of governments as to how the review could have possibly come to that conclusion.

Senator MARGETTS—Are there particular consultancies that are being asked to do a number of reviews?

Mr Samuel—It depends. There are over 2,000 pieces of legislation involved and they encompass a very broad range of subject matters. There are some consultants that have established a role in providing review services, but in many cases reviews conducted by communities or panels established by governments involve a number of groups which might be able to provide expertise. One of the things we have said to governments is that we do not think either the perception of credibility of a review, nor necessarily the credibility of the outcome of a review, is assisted by having industry representatives either present on review panels or, more importantly, having a majority position on review panels.

The perception at the least is that there is a conflict of interest which cannot possibly be resolved, and that conflict of interest will taint the review outcome. The objectivity, the rigorous transparent nature of the review, will be tainted by their very presence.

The reality is that, particularly where industry representatives have a dominant position on a review panel, it is not inevitable but a highly likely outcome the review will argue for at least the maintenance of the status quo. That may well be appropriate, but we think it is appropriate in the interests of the wider community that those matters should be determined by independent parties rather than by those that have a clear vested interest.

Senator MARGETTS—Is it available? Do you have any listing of who is conducting these reviews?

Mr Samuel—No, we do not. What we have is a list of the reviews that are to be conducted and the timetable. We receive the report on an annual basis. The report is due from governments on 31 March this year. We receive a report from governments on the compliance or non-compliance of their obligations under the national competition policy agreements. From that report, combined with the sorts of complaints that you will have received and which we likewise receive, we gradually find out where there has been a problem with a review and we can detect it.

Senator MARGETTS—Okay. That would be very useful if you could provide that review timetable and whatever documentation on that.

Mr Samuel—Certainly.

Senator MARGETTS—You mentioned the community consultation and that only some stakeholders are being consulted. Do you have any solutions in mind on how we get some greater confidence in the system in relation to consultation? I thought at one stage of putting ads in the newspaper and inviting people to put in, but I thought: why should I have to pay for this; why is it not happening?

Mr Samuel—Senator, the only remedy that we have—and it is, as I think governments are appreciating, a very effective remedy—is that the competition council is vested with a responsibility by COAG to assess performance of governments in compliance with the national competition policy agreements. That assessment is provided to the Treasurer on a biannual basis. As it turns out, it is occurring now annually, for reasons which I can explain if appropriate. That is relevant to the \$16 billion of competition payments.

The first assessment occurred in July 1997. That assessment related much less to the processes that you are talking about at the moment than to the setting of timetables and putting in place the process for undertaking the national competition policy reforms. It was not a difficult assessment. It was not an assessment that had to deal with complex issues.

The second real assessment though is taking place on 30 June this year. That encompasses the period up until 31 December 1998 and a period in which significant steps have—or in some cases have not—been taken by governments to undertake the real reform process.

Where governments have, for example, been involved in conducting reviews where we have detected or have been advised or informed by complaints or criticisms that the review has not been undertaken properly—whether it is the constitution of the review panel, the transparency of the review, or the failure to consult with all relevant stakeholders—they are matters that we would be taking into account in our assessment to the Treasurer on whether or not governments have complied with the obligations and whether they should receive the full payments due, which total up in this period covering the two years from July 1999 to July 2001 to \$2.5 billion payable by the Commonwealth to the states and territories.

Senator MARGETTS—How many complaints have you received?

Mr Samuel—You have caught me on the hop there. There are sufficient to make our annual assessment this year quite a voluminous document. I should go on to make two comments. I have just been reminded of one issue. I have to say to you there has been a very substantial compliance by governments of the competition policy obligations, but there are some difficulties. They are difficulties that have arisen in individual jurisdictions primarily associated with the review issues that you are talking about. They will receive some attention over the next two or three months leading up to the assessment process.

I should say to you that our process is very much a no surprises approach with governments and it is a process of endeavouring to facilitate the reform process. I have stated over and over again that the NCC would regard itself as having been 100 per cent successful. Therefore, we are able to proceed through every assessment with a 100 per cent tick indicating compliance by governments and that they should receive the full payments. We are very reluctant to recommend deductions. We do so only where the constant

negotiating facilitation consultation process with governments fails to achieve the necessary agreed outcome. That outcome, by the way, is not an outcome that is dictated by the NCC. It is dictated by the COAG agreements. That is our mandate, our direction.

I should also mention one other element of a review process. We have, very recently, issued a booklet prepared by the Centre for International Economics (CIE), which has been sent to all governments, endeavouring to advise and assist them on how to conduct reviews. It is a very interesting and comprehensive booklet and it provides advice to governments as to how those reviews should be conducted. We have done that because, in our experience to date, the CIE have undertaken some very rigorous reviews on behalf of governments. They are reviews that, despite initial challenges by some interests that were affected by the reviews, have not been subject to ultimate long-term challenge or criticism, so we have used that booklet to now go to governments and they have a very clear definition of what is required.

Senator MARGETTS—There is one particular issue that I have been trying to follow up for some time. Has the indicative review of the WA state agreement act seen the light of day yet?

Ms Cope—I am not sure off the top of my head. I can check that up and get that information to you.

Senator MARGETTS—My understanding was that it was supposed to be ready and it went to state cabinet in Western Australia last August. I have not seen it, but that does not mean that it does not exist. That was one I know there was a lot of interest in. We would like to know where it is.

Mr Samuel—I would have to check that up as I am just not sure.

Senator COONAN—I just want to take up issues to do with the public interest test and jurisdictional impediments to the consistent application of basic principles for a valuation of public benefit which logically would lead to further imposed cost and to reduced certainty. My question is in two parts. Do you see as a worthy objective a consistent set of principles? What impediments are in the path of the NCC's achieving a better cooperation for the application of the principles?

Mr Samuel—Yes, it is a worthy objective to have a consistent set of principles. But I think our view would be that the best principle to establish for public interest is to use that expression almost on its own. There is a very real difficulty when you start to provide check lists to provide some degree of specificity. In my days as a lawyer, we lawyers used always to argue for check lists. They were really good because, providing you could tick off the check list and you knew you were not encompassed by a check list, then what was left off the check list became the loophole.

Senator COONAN—At least it helped you to gather evidence, didn't it?

Mr Samuel—That is right. It was ultimately the source of the loophole and the 'public interest'—as those two words are expressed—has the widest possible connotation. It allows

the widest degree of flexibility. They are only indicative principles that are set out in clause 1(3) of the agreements. They provide some guidance, but they should not be exclusive, and they are directly specified not to be exclusive. They are inclusive. Our view is that governments ought to address all the issues that are relevant not only to the broader community but the community or particular issue and set of circumstances that are being dealt with at a particular point of time.

I hope somebody does not actually ask me to give an example of a matter that is not listed here that ought to be listed or that might otherwise be a loophole. The very nature of the fact that this is an inclusive set of principles I think is very advantageous because it does enable us to seek to have governments address the whole, broad issue of the wider community interest in dealing with very specific sets of circumstances encompassed by these 2,000 individual pieces of legislation they are dealing with.

To try and get changes to these tests or to get changes to these guidelines is not easy. That is perhaps an understatement. I have to say to you that I think it is mission impossible because it requires an agreement on the part of nine governments around Australia. It may well be that that requires legislative enactment on the part of those governments to get affirmation or confirmation at state and territory and Commonwealth level of the changes concerned.

Having sat in on a number of meetings of both senior officials and others in trying to work on areas of coordination of reviews, for example, of the professions and the like, it is not an easy process. You only need one government to stand out and you do not have agreement. Given the complexities associated with national competition policy as they are at present, both political and otherwise, I suspect that to try and get changes to the agreements would be a mission impossible.

But I will go back to where I started. I am not sure that it would be a very great advantage to us. The public interest test does not confine governments in addressing the whole range of issues that from a social viewpoint ought to be addressed and from the equity and fairness viewpoint ought to be addressed in dealing with the reforms that are required under national competition policy. Provided governments deal with this and achieve that appropriate balance of those three goals I talked of—economic accountability or economic efficiency, social responsibility, and equity and fairness—and take that as their three principles, that gives enormous scope to consider all the relevant factors involved in a public interest test.

I am not sure whether the Senate committee has a copy of this. In the very early stages we did provide a booklet of guidance to governments on the meaning of the public interest test, particularly as it applied to the third party access regime but also encompassing the broad third party test. I am happy to provide that to you. It only provides an indication. The Industry Commission also provided its own guide with its view of the public interest test. Of course, the Trade Practices Act has a public interest test in it. The ACCC has done a lot of work in that area as well.

Senator COONAN—And they have a guide to authorisations and notifications.

Mr Samuel—Correct.

Senator COONAN—Let me put it to you this way—

Ms Cope—I just want to add that, however, processes of discussing what the public interest tests mean which increase information and people's understanding of the issues are also very important too, because it is important to get the information out there and a good understanding of what sorts of things should be considered when you are looking at the public interest to enable the reviews to be conducted appropriately as well.

Senator COONAN—Against the background of what you have just said, has it been your experience that there has been either a lack of understanding or inconsistent application of what you might regard as an appropriate public interest test that has been applied from time to time by various jurisdictions?

Mr Samuel—I think that is right. I think it is only to be expected as we are dealing with a relative new area of reform and we are dealing with an area of reform which has some significant implications wherever it is applied. We found this has varied from government to government but, more importantly, it has varied at the various tiers of government as we move down into particularly local government, and then at local government level it has varied depending upon the degree of sophistication of the local government concerned.

Let me just give an example. We visited some of the major councils in Queensland. There are 17 major councils that have been applying the national competition policy reforms quite vigorously over the past couple of years. We visited some of those, and the degree of understanding of both national competition policy and the public interest test was very sophisticated. That has occurred because the Queensland Local Government Association, assisted by the state government, has been provided with funds to be able to conduct a significant and substantial information campaign that has been provided to councils to actually assist them in the application of principles of competitive neutrality, the public interest test—what it means, how it is applied, how water reform might be tackled—and the whole range of work to be done by local government. With some exceptions, local government in those major councils has undertaken a very significant task in implementing these reforms, and has done so generally with a minimal level of complaint coming from their constituents.

I can tell of one particular anecdote when we went into one jurisdiction in Queensland actually fearing the implications because of some political overrides that had been there in recent state government elections. As we walked in, the mayor said, 'I want to welcome you. In case you have any doubt, you are welcome back any time you want to come because our application of competition policy has been a significant benefit to our constituents, and our constituents are saying it.'

Having said that, let me say that there are exceptions. In one particular local government that we visited we were confronted with the concern from a councillor that it was no longer possible for that council to provide a local football field for the community cricket club. We were very quick to disabuse that notion and to point out that, of course, community service obligations and community service are part of what local government is about, and there is

nothing in the national competition policy agreements that prevent those being provided and being provided in exactly the same fashion as they had been provided before. So there is some confusion.

I then have to say to you that, as one moves away from urban areas and tends to get a little away from, if you like, the larger councils into more remote councils, there have been some difficulties through lack of understanding and, in some cases, lack of sophistication that flows from lack of understanding on the application of the national competition policy agreements. We have noticed, for example, that in some councils, by applying what they believe to be the requirements of competitive neutrality and competitive tendering, they will go out, for example, to have a two-kilometre roadway built and they will put it out to competitive tender, and the private sector will quite deliberately undercut the local work force. They will say they are therefore obliged to take that private sector tender. They therefore unemploy the local work force, and that unemployed local work force then has to relocate somewhere else to get jobs.

That is fine, except that when it comes to maintain the roads they do not have a local work force any more or, more importantly, when it comes to the second two-kilometre stretch of road the private sector tenderer says, 'We are very sorry, but this two-kilometre stretch is going to cost you three times what the first two-kilometre stretch cost.' That does not make sense; that just simply is an unsophisticated application.

Our advice to those councils is that the first thing they ought to be doing—and you will remember that I talked about the transition of change and dealing with these issues in a socially responsible and economically accountable way—is retraining and upskilling their local work forces so that they can fairly compete with the private sector anyway. Then, even if having done that it is found that the private sector is still undercutting, there needs to be a very reasonable and fair assessment as to whether that is in the longer term interests of the broader community, whether it is going to be possible to maintain that road two or three years down the track and whether it is going to be possible to build the next two-kilometre stretch for the same price as the first two-kilometre stretch. That is simple, commonsense business. As that information is starting to flow through now and the degree of sophistication is building up at local government level, these criticisms are becoming less and less, but there is a learning process.

Senator COONAN—Is it too simplistic to say that the problem is not so much with the guidelines or the principles but really with understanding and applying the principles and thinking through the implications of what a decision might be? There are obviously implications that go way beyond just an immediate decision, so it is very much a layered approach and understanding the full ramifications of how you apply the policy.

Mr Samuel—I think there is a substantial element of the difficulty at the moment attributable to that learning curve, which I have to say is now flattening out—not in the sense of the learning—in terms of the complexity of what needs to be faced. There is a substantial element of that. A lot of work is now being done at government level with the assistance of the NCC in ensuring that that lack of information is overcome.

But we should not move away from the fact that there is a political complexity associated with dealing with some of those vested interest groups I talked of before. They are highly concentrated. I am talking about the very clear vested interest groups that have a particular position that is costing the community as a whole. They are highly concentrated in their campaign to retain their protections, and that concentration impacts particularly in the political imperative. That is another element of what is going on.

Senator COONAN—We see special pleaders here every day.

Senator MACKAY—I appreciate that you have placed a number of caveats with regard to your presentation, and I am pleased with that. I think you are correct in relation to the Queensland situation with local government, for example. The difficulty is that that is not happening in all jurisdictions, that there are patchy applications in various jurisdictions, as you are no doubt aware since you have probably been more swamped than we have by submissions.

This would seem to lead inexorably to some reassessment in terms of the power of the Commonwealth. I know you have indicated that you do not favour this approach in relation to some jurisdictional policing or jurisdictional application of NCP because it does depend, it seems to me, very much on the willingness or otherwise of a particular state government. The Queensland state government, of both political complexions, has taken quite a proactive stance. We do have a reasonably equitable distribution of moneys associated with NCP there, but we do not in other states. How do you achieve that and still be, in terms of the paradigm that currently exists, hands off?

Mr Samuel—Let me separate out if I can the ability to achieve a new set of agreements, or a change to the agreements, which is what I was dealing with before—

Senator MACKAY—With COAG, et cetera.

Mr Samuel—and what I described as the mission impossible. If we were to try and change these agreements I suspect that it will not happen; it will be truly an impossible mission. Thus, I have suggested we ought to leave the agreements as they are and instead focus on how they are administered, how we actually achieve the results or overcome the complexities that you described.

That is where the assessment process becomes very important. It is only now that the assessment process is beginning to bite. It is only now that the Commonwealth, through the COAG agency of the NCC, has the capacity to start drawing states into a common position of performance.

Perhaps I need to explain this a bit more. The July 1997 assessment was a very early assessment. We were at pains, because a lot of work had already been done by the states in setting up the processes of reform, to try to ensure that states got a positive assessment. We did so even recognising that there had been some delay, some non-compliance by states, particularly in some of the major utility reforms of gas and the national gas access code and the like.

We felt at that particular point it was not appropriate because primarily states were involved in setting up process timetables and they had done a fairly good job in doing just that. It was not appropriate to bring about negative assessments at that point. This next assessment is a very important one because now we have had 18 months to two years of the actual reform process going through the pipeline. We are now able to detect failures to comply by states. We are now able to detect the disparities that you have just referred to and to deal with those as part of this assessment process. We endeavour to ensure that states actually bring themselves up to the pass mark, if you like. I do not like to put it in those terms because we do not like to set ourselves as schoolmasters or headmasters in this area; rather we try to see ourselves as facilitators of the reform process. We are working with governments.

So, where a government might have failed to perform or failed by its mechanisms to achieve the desired results, we have been working with the government over the past year to 18 months to ensure that they get to the position where at 30 June this year we can say, 'Yes, this has been a pass. This has been 100 per cent compliance and therefore it is appropriate the competition payment should be made.'

The Queensland government has done something unusual, and it is a matter that we have been quite publicly supportive of, and have praised. Under both governments in terms of political persuasion, they allocated about \$150 million of their competition payments to local government, recognising a very simple issue, that a failure to perform by local government results in the non-compliance by state governments which results in a negative assessment. Therefore, it was simple common business sense to provide substantial payments out of those competition payments to local government and say to them, 'This is your incentive. This is our assistance to you to ensure that we the state government can comply by your compliance with your obligations.'

That has worked very efficiently with the Queensland Local Government Association. Its degree of information dissemination and, if you like, its flattening out of that learning curve has been quite extraordinary. The sophistication of the work that they have done, the computer work that they have done—the information technology work—and their communications with their councils has been quite extraordinary. We are encouraging that with other governments.

Senator MACKAY—Take, for example, the Victorian government situation with regard to local government. That is not happening there. With the application of CCT, the circumstance you describe with the council and the two-kilometre road, they are saying—and perhaps you could enlighten me as to whether this is the case—that they are required to take the lower quote in terms of the private sector bid? Is that not the case?

Mr Samuel—First of all, compulsory competitive tendering is not a requirement of national competition policy.

Senator MACKAY—Would you say there was a nexus between the two?

Mr Samuel—No, I would say that compulsory competitive tendering is an economic decision by governments. Competitive neutrality is a requirement, and that is to simply

require government business enterprises to remove the competitive advantages and disadvantages they have by being a government business enterprise in terms of dealing with the private sector. But there is no requirement under national competition policy that there be compulsory competitive tendering.

Senator MARGETTS—But is it not the case that Victoria has gone to the other local government associations throughout Australia and said that that should be the appropriate response to competition policy, that compulsory competitive tendering should be adopted by all states? Hasn't Victoria gone to all the other states and asked them that that should be the case?

Mr Samuel—I am not aware of that. I do not know. Let me also say that to the best of my knowledge, which is not deep, the compulsory competitive tendering aspects under the Victorian regime do not require the lowest price tender to necessarily be accepted. There are a number of elements of a tender process that need to be taken into account, one of which is price; another is quality of services, and another may be the longer term issues of maintenance. There is a whole range of factors that need to be taken into account in terms of competitive tendering and lowest price is not the definitive factor.

In the competitive tenders that I have been able to examine myself, those that are conducted appropriately will tend generally to have a grading. Price issues will often be graded as low as 40 per cent of the total issues that are taken into account. Quality of provision of services will be a very significant factor. Legal issues will be another factor. There is a whole range of other elements involved in it which are not necessarily price oriented.

Senator MACKAY—It might be worth us talking specifically to local government in Victoria at some stage during the inquiry because they have a bit of a different tale to tell in relation to that.

Ms Cope—I want to make the general comment that prior to national competition policy, state and territory governments were making decisions on how their local governments should operate businesses and how their own businesses should be operating. One of the real advantages of national competition policy is the transparency that it is bringing to those processes across the country.

As for the example that you are giving which says this is happening in Queensland but not happening elsewhere, a lot of that is the result of the transparency and comparison that is happening through national competition policy whereas those differences always existed across the states and territories. They are starting to look at what are the best approaches and learning from states that are doing it well and the influence that has on those that are not.

Senator MARGETTS—Or badly, as the case may be?

Ms Cope—Yes. That learning process is actually a benefit that is coming through from the transparency of competition policy and the processes that it introduces.

Senator MACKAY—In the minds of people concerned with this in Victoria, this is where NCP's name is often taken in vain—in compulsory competitive tendering and in privatisation of authorities and so on. This is the difficulty in terms of a hands-off jurisdictional attitude where you can say, 'That's not what we meant by a national competition policy, but the Victorian government is choosing to interpret it this way and the Western Australian government is choosing to interpret it that way.' This is one of the major impediments in terms of an equitable application of what was originally intended: jurisdictions are, effectively, doing what they want.

Mr Samuel—It is not appropriate for us in the area of national competition policy to comment upon what jurisdictions might be doing in a whole range of areas. But, if I am not mistaken, compulsory competitive tendering in Victoria was introduced prior to April 1995, which was when the competition policy agreements were signed. I could be wrong, but I think the restructure of councils took place very early in the term of the first Kennett government. I believe compulsory competitive tendering came out as a result of the recommendations of the Leonie Bourke inquiry into local councils in Victoria, and it was as a result of that recommendation that CCT was introduced.

Senator MACKAY—We have got ALGA appearing next. We will have a chat to them about it. All I am saying is that there is the perception that CCT has been driven by NCP. That is the perception. That is the difficulty. Also, there is the perception of NCP driving privatisation—that is where my concern is. There ought to be more intervention by the Commonwealth in relation to the application of NCP in state jurisdictions. You rightly point out the difficulty in terms of getting agreements through COAG because of the difficulties with the states, but theoretically—and you probably would not agree with this approach—is there any prohibition to Commonwealth legislation?

Mr Samuel—I am not a constitutional lawyer. I will take you back to my introductory comments. NCP was introduced by agreement between the nine governments of Australia for a reason and that was because the Trade Practices Act had those three limitations which were constitutional limitations. I suspect that the very reasons that the COAG agreements were ultimately entered into, and were indeed entered into after a fair degree of negotiation under the then Keating government, the very same constitutional issues that were dealt with by the Commonwealth at that point of time, would be encountered now if there were an attempt to look at the Commonwealth legislating.

Let me go back. You talk about non-intervention. What I am endeavouring to put to you is that the agreements as they stand actually achieve an enormous amount. They have some very wide ranging effects and implications. It is the implementation of the agreements that is the important element. The Commonwealth has the ability to enforce proper and appropriate implementation through the agency of the NCC which is a COAG appointed body. It is not a Commonwealth appointed body although we report to the federal Treasurer. We do that with our assessment process.

That assessment process reaches not its peak but a very important threshold on 30 June this year. Then, for the remaining element of the reforms, the assessment process reaches its real peak towards the middle of June 2001 when the balance of the \$16 billion—and we are talking at that point of time about \$12 billion of payments—will be subject to an assessment

that should take place then. That will relate to performance by governments in the 2½-year period from January 1999 through to July 2001. That is a very important element—if you like, that is the umbrella. Some would call it the dark cloud that hangs over states and territories in terms of the implementation of these agreements.

The only area where I am suggesting there is a mission impossible is in actually trying to change the agreements. The proposition I put to you is that the agreements probably do not need change. They are going through some peaks and troughs at the moment but they are gradually now getting into an evening up process as the assessments are coming into play. That makes those assessments a very important element of the COAG agreements.

CHAIR—I have just got a few issues. You mentioned before the \$16 billion in payments to the states. Over what period is that?

Mr Samuel—It runs from 1 July 1997 through to July 2006.

CHAIR—So it is a 10-year period?

Mr Samuel—A nine-year period—1997 to 2006.

CHAIR—Could we return to a couple of specialist areas? Very early in the piece you mentioned conveyancing. The experience I had when I bought a place in New South Wales is that for conveyancing it cost me four times what it would have cost me in my home state of South Australia because of the legal—

Senator COONAN—Much better lawyers.

CHAIR—They are very much more expensive. In fact, we get the lawyers out of the loop in South Australia. There have been attempts by lawyers to strangle the land brokers in South Australia. There has been at least one attempt by some lawyers in a Labor government in which I served which we soon fixed up good and proper for good reasons. Are we getting any progress at all in breaking down these sorts of monopolies where there are exorbitant charges for land conveyancing?

Mr Samuel—It is slow.

CHAIR—I bet it is.

Mr Samuel—It is meeting resistance. Unfortunately, of more recent times, it has met some resistance from the legal profession, with the Law Council of Australia issuing a report only towards the end of last year—I could be wrong on the exact nature of this report—indicating that particularly the legal monopoly ought to be retained and in some cases ought to revert to all dealings in personal and real property. It actually seemed to me to be covering almost everything that you ever did.

I must say that I do not think that there is a great deal of enthusiasm with governments around this country to actually reverse the legal monopoly issue from the current position. You have mentioned land brokers in South Australia. I think our report makes clear what

happened with the removal of the legal monopoly on conveyancing in New South Wales where consumers have been saving of the order of \$86 million per year, which is the estimate that is given.

CHAIR—That is by doing their own conveyancing.

Mr Samuel—Not necessarily doing their own, but by the establishment of the land broker or the paralegal conveyancer. Conveyancing used to be the monopoly of lawyers and used to be a great source of income, particularly with fixed fee schedules. What has happened in some states once that has been removed is that some legal firms are actually exiting that area of the law altogether, and simply saying, ‘Look, it is just not worth while our doing it. Frankly, you do not need the level of expertise that we are providing as fully qualified lawyers in major legal firms for a basic conveyancing process.’

CHAIR—When was it broken down in New South Wales?

Mr Samuel—I think 1992 was the—

CHAIR—I wish you had given me evidence before last July—it cost me \$1,200.

Mr Samuel—In 1994, sorry. Between 1994 and 1996, conveyancing fees fell 17 per cent.

CHAIR—Originally, in the informal briefing we had with Allan Fels from the ACCC, we went into some of the implications of moves that he was making on the specialist colleges and some of the questions he was asking. I wonder whether you can tell us what progress has been made in those sorts of areas? I think at the time he was having an argument with the anaesthetists of New South Wales who just all happened to be charging the same price, and he was arguing that it was price fixing. But there are much broader implications of the specialist colleges than that.

Mr Samuel—I would love to be able to help you, but this is a matter that is being handled by Allan Fels and the ACCC because it is not a legislative restriction. The NCC and the competition policy agreements are primarily concerned with governmental legislative restrictions on competition, whereas this is a restriction that is imposed by the nature of the rules governing entry into those areas of profession established by members of the profession itself.

You have, however, raised a very important issue when we are dealing with the professions and with some of these exemptions from competition that we have to deal with at our end. You used the expression ‘monopolist’ before, and there is a common view out there among the population generally that nobody really likes monopolists except monopolists themselves. And when we have a monopoly position, or if we have a price fixing arrangement that occurs between, say, two petroleum companies and the ACCC fines those petroleum companies tens of millions of dollars, then that is applauded because there is a sense of outrage that petroleum companies should engage in price fixing involving the setting of petrol prices at service stations.

What the national competition policy is about is actually saying that there ought to be the same sense of discipline, the same sense of rigour and of analysis, applying when we are dealing with those who were formerly exempted from those sorts of disciplines by constitutional limitations. The governments basically said, 'We will override the constitutional limitations by setting up these agreements,' and thus the governments have enacted the Trade Practices Act, if you like, as state legislation. And that means that those who formerly escaped those sorts of examinations by that constitutional loophole, such as the petroleum companies—I mention those because they have been well publicised—no longer can escape it.

CHAIR—Concrete price fixing, too, I guess is the same.

Mr Samuel—Because they were corporations operating across borders, that was always the subject of examination by the ACCC and, as you have mentioned, that has also been well publicised. So the ACCC are now saying that they now have the opportunity to examine those who were formerly, by constitutional loophole, exempted from the Trade Practices Act to see whether, in fact, their price fixing arrangements, their—what I will call—consumer disempowering arrangements in advertising restrictions, for example, are fair and are appropriate in the public interest and apply the appropriate public interest tests accordingly.

Senator MACKAY—I notice in the booklet that you provided you say that national competition policy is not the Holy Grail. You also go on to say that the central contribution the NCP can offer is a reduction of costs to Australian households and businesses, fuelling rising living standards and making our industries more competitive, with scope for higher economic growth and sustainable job creation. They are very laudable aims, but how do we assess that? We just had a mantra, a glib presentation from Treasury, that was all macro-economic stuff with very little reference to externalities in terms of the macro-economic situation. They were unable to enlighten us as to the impact the NCP has had. All they were able to do was actually refer to an Industry Commission inquiry conducted in the early 1990s which projected a five per cent growth in the GDP. As you know, we move on; life moves on. How do you assess the economic impact of the NCP? Are you tasked with that?

Mr Samuel—No, we are not and we probably do not have the resources either. We have some very finite resources so our role is not to actually do that. But we have three sources. The first are governments themselves. Governments report to us on an annual basis and they report to us also in the intervening period about the impact of the various reforms on various sectors of the economy, various community groups and sections of the community. So governments are providing those reports to us and from those reports we are able to—with the resources we have—put together the sort of material that appears in this booklet or in our annual report. Again, I think copies of that have been sent to you but, if they have not, we will make sure they are. There is a lot of material in our annual report that sets out the sorts of benefits that are being achieved, some of the costs that are being incurred and some of the difficulties and complexities that are being encountered in this area of policy.

The second is the Productivity Commission. Let me put aside the Industry Commission, if you like, forecasts of 1994. That was prepared by the Industry Commission at the request of state governments and it may be interesting at some time in the future when this program is completed to actually go back to that and to compare the forecasts with the achievements.

I think to date it is becoming apparent that in some areas the achievements or the benefits are somewhat less than assessed by the IC but in other areas the benefits are more extensive. They underestimated some of the flow-ons. Whether it is going to total up to five per cent of GDP or not, I have no idea. I do not think anyone really knows at the moment.

The third area that we did get information from are stakeholder groups. There are groups out there that say to us that the implication or the effect of the introduction of a particular reform has either been plus-minus, positive or negative. It has cost them in one area but they have some benefits in other areas. Part of the extensive consultation process that we are undertaking with stakeholders at the moment is to analyse just that and to work with them to have them understand what is really being done by the NCP, what is attributable to the NCP, and what the impact of it might be.

I think I mentioned at the previous Senate hearing into this in Melbourne last year, Mr Chairman, just one very interesting example that we had up in Queensland when we visited all sectional members of the Queensland Farmers Federation during a two-day visit up there. We actually went into one particular group, the Pork Producers Council, and they initially said, 'You guys are causing us all a lot of a problems. You have tariffs and imported Canadian meat.' We quickly disabused them of the notion that this had anything to do with national competition policy.

After about half an hour it became quite apparent that one of their real interests was the cost of cheap grain. We said that that was part of the national competition policy review process, that is, the whole process of the single marketing desks in the area of grain—barley and the like. They said, 'Now that you tell us that national competition policy is the sort of thing that we really welcome, that might give us the opportunity to get cheaper grain which is a fundamental element in pork production.' You get those sorts of tensions. You get those benefits flowing through but a lot of it is part of the interaction that occurs between us and governments with various stakeholder groups.

Senator MACKAY—But the conduits you described are not impartial. The states actually have a pecuniary interest and there is no independent assessor of national competition policy about the macro, micro, sectoral, regional, et cetera levels.

Mr Samuel—The Productivity Commission is probably the only independent source and the one that is conducting an analysis. It conducts annual analyses of the impact of micro-economic reform. It is doing its own analysis at the moment, as you are aware, of the effects of competition policy on regional and rural Australia and that is the only independent source that I am aware of.

CHAIR—Thank you.

Senator COONAN—This is a conceptual question—and I realise this is Allan Fels's particular area—but just coming back to pick up on a point about professionals: it is true, isn't it, that with national competition policy one size does not fit all? That is why you have authorisations and exemptions. But with something like anaesthetists it seems to me that the overwhelming community interest is that you wake up after an operation—namely, that you have competent people available to do it—and that cost must be a lesser consideration.

Would you agree with that kind of approach? It is not quite the same as petrol distribution, is it?

Mr Samuel—Absolutely. They are the sorts of issues that are taken into account as part of the public interest test. I should just correct one impression that I may have given you. The provisions are not totally the jurisdiction of the ACCC. It is the professional agreements that occur within professional associations, but there are various restrictions contained in legislation that impact on professions which become the supervisory jurisdiction of the NCC in dealing with state governments as part of their review process.

There is no question that you need to deal with certain professions and with many trades and many sectors of the economy and of the community in vastly different ways. That is the flexibility of taking account of the public interest test. If price were the only factor, it would be a quite easy economic analysis to do, but price is not the only factor. It is a balance of economic issues with social issues and equity and fairness issues.

We said in our annual report that there are some in the community who indicate, like you, that they are very concerned that they wake up after an operation, but they might equally be concerned if there were 10, 20, 30 or 100 more anaesthetists who could equally ensure that they woke up after an operation but were being prohibited from entering into the profession by some restrictive rules. They would be concerned that an anaesthetist or a professional was earning very substantial rewards for ensuring you woke up when some other anaesthetists were not permitted to enter the profession and could equally ensure that you woke up. That becomes the balancing between ensuring you have absolutely appropriate standards that society and the community require, but ensuring that we do not use the issue of professional standards—

Senator COONAN—As a barrier.

Mr Samuel—as a barrier or guise for restricting entry and providing anticompetitive barriers.

Senator MARGETTS—How much do the states understand? At the end of last year, I attended a Western Australian state government conference where the WA state planning authority were able to give very little information. They were in the dark themselves about how state planning laws would be affected. They knew they were moving towards a change to their laws to comply with competition policy, but they could give almost no advice to the local government sector about how the planning provisions and decisions would change or be altered.

How much do state governments and planning authorities and so on understand? My understanding is that a lot of federal ministries know almost as little. What level of knowledge and understanding is there amongst government bodies about these issues: about what they should and should not be complying with?

Mr Samuel—It is not satisfactory, but increasing. At national competition policy units around the states, there is a high level of understanding and a high level of interaction between the NCC and those units concerned. As you move outside those units—and they are

the units that are responsible for ensuring the state governments in their various departmental levels implement the policy—there is a dissipation of knowledge. In some areas outside those units there will be very little knowledge and very little interest. In some areas there will be not only a disinterest but almost a wish that it would all go away because it changes the status quo.

Senator MARGETTS—I sure there must be.

Mr Samuel—That is increasing.

Senator MARGETTS—With something like 2,000 pieces of legislation and all of these potential needs for training and increased knowledge, what kind of cost is involved in all of this?

Ms Cope—There are two areas of knowledge that affect that. One is an understanding of what their obligations are and what things they need to review. I think you are really not going to get the other one, which I think cuts to your question of not knowing what this means for a particular piece of legislation, until they have undertaken the review.

The reason for that is that the national competition policy does not say you take the same approach across the board. You need to have gone through the review process to get the information about the particular circumstances in a particular case to be able to say, ‘When you weigh all these things up in this case, this is what it means for our piece of legislation.’ I am not sure what stage of the process they were at when you were speaking to them.

Senator MARGETTS—But isn’t it true to say that a number of ministries are taking pre-emptive action in order to avoid a review on the basis that they think they have to do it?

Ms Cope—I do not really understand what you mean.

Senator MARGETTS—Well, things like cooperatives. Advice that was being given from the federal ministry for agriculture was requiring states to take proactive action in changing their programs and legislation. My understanding was that they were saying they had to do those changes because of competition policy.

Mr Samuel—I am not aware of the specific instance you are talking about. I can say to you that we are aware of cases where national competition policy has been properly or improperly—let me leave that aside—used as a means of seeking various changes to take place in areas or as an excuse for things to occur which are not necessarily a part of competition policy. I think I have indicated before, for example, that privatisation is not part of national competition policy. Yet on many occasions we have heard those at a political level say that the reason that they are undertaking privatisation moves is that national competition policy requires it, and they may lose payments from their competition payments if they do not proceed down that course. Without wishing to embarrass governments or political leaders, we have to actually explain quite quietly that that is in fact not the case and that privatisation is not an element of national competition policy.

You asked before about these restructurings and the cost. I do not think I can give you a cost. I think that governments would be able to provide that to you. What we endeavour to do is to ensure that unnecessary costs are not incurred by ensuring that the process that these reviews involve, or the processes of restructure, is done in a manner that does not go overboard or down a course of action that leads to extensive or excessive costs being incurred.

I should emphasise though that there are two areas of this whole national competition policy that we are dealing with. One is the review process. Very often with these 2,000 pieces of legislation, you would pick it up immediately when you saw them. You do not need to have a highly professional firm outside do a review. You do not even need to have a full committee of review or a panel of review. The answer and implications are so obvious in terms of the necessity to remove what may have been anticompetitive restrictions that have been sitting there for years and decades and have little relevance today. You can actually undertake the review very quickly internally and bring about the result.

The costly reviews are those that are highly complex, particularly where they are politically complex. They are the ones that tend to cost a lot more because they involve independent parties doing the work. The other element though of competition policy which is just as significant, if not more significant in many respects, is the restructuring of government business enterprises. That really is just part of the whole restructuring that is going on in government in Australia to make it more efficient and to provide better services for a lower cost to the community. I think we all understand the costs of those sorts of restructuring. I think we are also beginning to understand the very great benefits that are flowing from it.

CHAIR—Thank you very much for your evidence this morning. Could we ask you for a copy of a review booklet that you mentioned earlier from the Centre for International Economics?

Mr Samuel—Yes, I could supply it.

CHAIR—Thank you very much.

[12.04 p.m.]

BELL, Mr Christopher Mark, Policy Manager, Finance and Microeconomic Reform, Australian Local Government Association

CHAIR—Welcome. We do prefer all evidence to the committee to be given in public but, should you at any stage wish to give part of your evidence or answers to specific questions in private, you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement. At the conclusion of your remarks committee members will ask you questions.

Mr Bell—Thank you, Senator. Thank you for the opportunity to appear today at what I understand is a preliminary hearing of evidence to set some direction to the inquiry. ALGA is the national representative of local government in Australia. Our members are the peak state and territory local government associations, which represent some 705 councils throughout Australia.

ALGA, as you would realise, is yet to finalise a submission to the inquiry but, as I say, I am happy to provide here today preliminary observations on the issues confronting councils and local communities and take a guide from the committee as to the sorts of issues that you may well be interested in in our final submission. On preparation of a final submission, we would be happy if the committee would provide ALGA with an opportunity to give a fuller account of some of the issues that we will raise in the submission.

National competition policy remains an issue of strong concern to councils. A key objective of NCP has been to remove the special advantages enjoyed by government business activities—that is, the issue of competitive neutrality. Other areas of effect for local government have been in the extension of the Trade Practices Act to local government and a requirement to review regulation for anticompetitive elements—that is, both the legislation applying to local government in the state sphere and legislation enacted by local government where that is the case. These activities have necessitated a considerable change in culture and organisation for councils which, regardless of any assessment of final outcome, has consumed considerable resources of councils and certainly moved, in some cases, a focus away from core activities.

Intensifying the effect is a lack of recognition of the contribution of local government to achieving NCP goals. Monetary recognition through access to competition payments could have acted to ameliorate some of the cost of NCP implementation to councils and ensured a smoother transition, as has been done in Queensland where local government has been able to share in competition bonus payments to the tune of \$150 million. Local government commitment to national competition policy has been weakened by the action of the government in the 1997-98 budget to discount local government's only Commonwealth funded benefit from NCP—the guarantee of real terms per capita maintenance of local government financial assistance grants.

A factor in the negative perception of national competition policy in local government that is widespread amongst councils is the confusion with other competitive reforms—and I heard you raise some of these with Mr Samuel before me. The major example, of course, is

the compulsory competitive tendering in Victoria. Councils have also become confused about the effects of NCP and their interaction with the major socioeconomic changes which are occurring in rural Australia and other areas undergoing often severe and rapid structural change.

In the case of the accompanying reforms, though not required by the agreement, there is an argument for including the effects of, for example, CCT in any assessment of the effects of NCP since it arises as a result of the delegation of responsibility for NCP implementation to the states. NCP has resulted in the removal of subsidies, exacerbating economic disadvantage. The combination of observable direct and indirect costs and the lack of tangible benefits in local communities has weakened councils' political commitment to NCP. This has a very strong effect in councils. They feel politically responsible for those things which they have undertaken in the name of NCP. The notion of equity and self-determination is affected by the lack of opportunity for effective public benefit testing in some areas. They are the major points which I think need to be brought out.

Senator COONAN—Could you just say that last point again. I am sorry; I missed it.

Mr Bell—The whole point? I am referring to the socioeconomic effects of NCP.

Senator COONAN—It was really just the last sentence or so.

Mr Bell—What I have said was the notion of equity and self-determination of councils, the ability for councils to self-determine their actions, is affected by the lack of opportunity in some cases for public benefit testing of NCP outcomes. They are the sorts of major points which I wish to raise. I am happy to take questions. Those which I cannot take I undertake to include some reference to in our final submission.

Senator MACKAY—That final point in relation to the lack of opportunity for effective public benefit testing is a very interesting point. Do you want to expand on that a bit?

Mr Bell—I think the original NCP agreements contained, as you would be aware, a fairly major reference to the necessity, where the restriction of competition outweighs the benefits that could be accrued from NCP, for a mechanism not to have to implement competitive reforms in those areas. However, on the ground, the policies for actually achieving that have been often fairly vague. There have been exceptions to that in Queensland—and perhaps this was a function of the resources available to implement NCP in Queensland. There have been fairly strong NCP public benefit tests proposed and implemented which ensure that councils are able to make proper assessment of the benefits against the loss of amenity and so on that occur from implementing NCP.

On the other extreme, the method by which CCT was imposed on councils in Victoria has meant that, because there were quotas involved in the amount of activity that councils had to contract out, it precluded councils who were aiming at this target all the time from actually undertaking any assessment of the public benefit that was involved and perhaps saying they would not undertake this because of public benefit. In many cases, at least in the early days, they were not even aware that the public benefit test actually existed, let alone how to instigate it.

I remember seeing a booklet put out by some Victorian councils, of which I think Loddon was one—and there were probably a few of them—in which they were talking about the issues involved in CCT. The statement was that presumably the state government had already assessed whether there was a public benefit and they said, ‘There must be, because this is what we are doing.’ So there was a misunderstanding of where the onus of public benefit lay, and that sort of thing.

Senator MACKAY—Mr Samuel indicated in previous evidence that he thought that CCT may have actually pre-existed NCP. It is clear that the Victorian state government has used national competition policy to drive compulsory competitive tendering. It may even be explicitly stated; perhaps you could illuminate me on that. Is he correct in the assessment that the CCT predetermined—

Mr Bell—That CCT was introduced prior to NCP? It is beyond my recollection, I am sorry. But, certainly, the Victorian government have strongly emphasised CCT as an element of NCP, even though there were incompatibilities in terms of public benefit testing. In fact, CCT as a policy in its early days did not even require competitive neutrality from councils, so the internal business units of councils were often competing at an advantage to private companies, thereby being probably in breach of NCP, before NCP existed, obviously. But, if you look at the clause 7 statement that came from the Victorian government, they claim that CCT is a very vital element of their entire NCP package. So I do not believe that you can divorce it completely as perhaps the NCC seek to do. They are always pointing to things and saying, ‘This was not our responsibility,’ but NCP created a whole environment of things which happened because NCP was there and, as he even said, they are often justified in the name of NCP and so on. So it is difficult to make those separations.

Senator MACKAY—That is exactly the point that I think some committee members were attempting to make before. This does reintroduce the jurisdictional difficulties. What seems to be happening, obviously, is that there is a disparate application of NCP and in particular matters associated with it across Australia.

The NCC say, ‘Well, that is not really our problem but we would prefer to resolve it—and reporting mechanisms and so on’ but, because it is a COAG agreement, it is impossible to actually change. And there are some jurisdictional or constitutional difficulties that they have highlighted, which I think we should have a look at to see whether they exist, to see whether there are any prohibitions for Commonwealth legislation in this area. What is your view in relation to these jurisdictional disparities and the application of NCP?

Mr Bell—ALGA have always been of the opinion, and I think we expressed it in our submission to the House of Representatives Standing Committee on Financial Institutions and Public Administration inquiry into NCP, that the implementation of NCP was unnecessarily complicated by the splitting of it between so many jurisdictions—seven involving local government and eight or nine in total. For local government this meant that the wheel had to be reinvented that number of times and councils in one state were not able to learn from others. There were no commonalities which could be discussed and refined. We always said that to implement NCP across 710 councils—or whatever it was at that stage—was a massive undertaking. It was a bigger undertaking than had to be achieved by the state governments. A huge amount of detail was involved. It would have simplified

things greatly had it been monitored at a central level and all the resources of state departments, Commonwealth departments and local government associations brought together to nut out the problem. As I say, a huge amount of resources have been expended on creating systems in some places while in other places resources have not been available to do that and the systems may have been weaker as a consequence.

Senator MACKAY—Maybe the government ought to apply a harmonisation principle to national competition policy, considering that is what is happening in the workplace relations area.

Mr Bell—Perhaps, but it may well be too late to do that now. It would mean councils and other NCP affected bodies having to revisit all those things again, which would be quite complicated. We are a fair way down the track in NCP implementation.

Senator MACKAY—What is the status on a state by state basis in terms of local government? I do not want to put you on the spot; you can come back to us with that information.

Mr Bell—In our final submission we will try to report more closely on what is happening in each state. As a national association we have really had only an overview of this. In some cases the state associations have been closely involved with their state governments in creating the NCP environment. I keep coming back to Queensland, but Queensland is an exemplar for this. Because the state associations have been given resources to do it they have been responsible for creating local government specific material and trying to engineer the best possible system to benefit the councils and the community and to fulfil the obligations under the agreement. In some other states, the implementation has been a very vague and long-winded process. In some cases it has been also unnecessarily complicated.

Senator MACKAY—How is local government outside Queensland coping with the financial imposts?

Mr Bell—It is difficult to pinpoint. Local government is under a great deal of financial strain and it is difficult to separate the different impacts. Some are to do with the low taxation base and others are to do with the gradual decline in financial assistance grants. As I said in my opening remarks, it is difficult for councils to implement something as complex as NCP in their operations. It requires a whole reorganisation of the way they perform their operations; it involves great cost in terms of distraction from their main game as well as the direct cost of consultancies and all that sort of thing. It has been a very awkward process. I had another point there, but I have lost it.

Senator MACKAY—With regard to the complexity and cost imposts, we have a proposed major change to the taxation system coming up; how are those costs that councils are currently bearing with NCP going to be exacerbated because of the potential decline in the revenue base for local government under the new system? Have you thought about that?

Mr Bell—It is a continuation of the decline in the revenue base, reading the new tax system in its best light. Perhaps to some degree councils are over the worst hurdle. I am not

certain about that. We will find out some more about that before our final submission. Certainly the costs are going to continue and there are issues to grapple with in terms of reciprocal taxation and so on, which we flagged from the very beginning. There are issues about the corporatisation of larger council enterprises and the taxation liabilities flowing from that and so on. That was in our evidence to the F&PA committee. The Treasurer promised the Local Government Association of Queensland that the government's taxation reforms would deal with some of these issues. In the end, they were not dealt with at all.

Senator MACKAY—Is that right?

Mr Bell—Yes, that is right.

Senator MACKAY—I was not aware of that.

Mr Bell—The major issue there is that, where there is a requirement for corporatisation of local government entities, councils have been reluctant to corporatise entities where there is a taxation liability to the Commonwealth. They have taken that as being relevant to the public benefit test and have therefore not corporatised their bodies, even though the best theoretical models would probably have said that these enterprises should have been corporatised and separated more from the other council administration. From memory, the FIPA committee actually recommended the Treasurer deal with this issue. As far as I know, it has not been dealt with.

Senator MACKAY—The Treasurer indicated that it was to be dealt with in these bills?

Mr Bell—I do not know about in these bills; it was in the totality of the government's taxation reform package.

Senator MACKAY—Okay.

Mr Bell—This was well before the package was introduced. The issue is how to stop councils being financially disadvantaged from this. The Treasurer was trying to nut out a way that councils could be reimbursed for the payment of new taxes. If the enterprises remained within the umbrella of the council, the tax equivalent payments would go to the council, but if they became corporations they would become subject to Corporations Law and have to pay certain taxes. The Treasurer undertook to ensure that these would be paid back, but he never made clear what the mechanism was going to be. In fact, there was some hesitation about it but he undertook to have a mechanism where no council would lose. In fact the mechanism which was eventually proposed some way down the track was one where councils in aggregate would not lose, which meant that the councils paying the most tax would lose the most money. It was a strange arrangement. As I say, he said all those things would be sorted out in the tax package, but in the event local government was not consulted on the tax package and this issue was not raised.

Senator MACKAY—Now you have the GST on the majority of council services, which you did not anticipate either.

Mr Bell—Yes, that is right. That may not be a direct cost to councils, but it will be a direct cost to consumers.

Senator MACKAY—Thank you.

Senator COONAN—I want to come back to how councils go about assessing public benefit. The problem seems to be much more in implementation than with the principles, from what you have described. Is there a role for your association to develop any common criteria that would apply to councils? It may not be an appropriate role or you may not be appropriately resourced. Obviously there are a lot of commonalities from council to council; you are not really dealing with such different applications.

Mr Bell—As we say, NCP was implemented on a state by state basis and applied to local government on a state by state basis. That leaves little opportunity for us to pick up these issues on a national basis. Prior to the states actually publishing the clause 7 statements, ALGA did, together with the state associations, work out our preferred implementation. We entered into those sorts of calculations of the correct way to do things in good faith. We laid down some principles, which are in our FIPA inquiry submission—things like threshold tests for significant business enterprises.

In the event, different states decided on different thresholds for these things and they have been implemented in different ways. Our recommendations were ignored and it was probably outside the jurisdiction of the Commonwealth to do anything about it because the responsibility for implementation did go to the states. The Commonwealth never played any coordinating role in this. The NCC was probably remiss in not advocating a more coordinated approach, instead leaving it to the state governments. I think they believed that if they did it that way they would achieve better outcomes from the point of view of the aims of competition because the states would be divided on these issues.

Getting back to the public benefit test, I think issues like that were deliberately downplayed. In some states the issue was not picked up on at all, and the NCC at that stage was playing no role in promoting the public benefit test. I notice that more recently they have played a role in promoting it in response to a large amount of public pressure that this should receive a greater emphasis than it had been receiving.

Senator COONAN—When did you say that the NCC was not actively promoting the public benefit test?

Mr Bell—Prior to recent times. Around the time the states were formulating their clause 7 statements and all the other things were happening, the NCC were clearly taking a line—and I do not have the actual quotes here—that the public benefit test was in some way something that you only brought into play—and they had a way of expressing this—when there was some preliminary test that applied before the public benefit test. So if you suspected there was some public benefit thing then you moved into that. So it was once removed from the entire process which, from what I have heard from other sources, was not the intention when the agreement was natted out. There was quite a degree of pressure from community groups to include that public benefit test in the first place for the very reason that it is there, and it has not been emphasised.

Senator COONAN—Did you get this impression from some publication or from some statement; on what is it based?

Mr Bell—I may well have. It was probably from a large number of statements over a period of time.

Senator COONAN—Could you identify them perhaps on notice?

Mr Bell—Yes, I would have to take it on notice. This was some time ago now. I do not know if it came out in today's evidence, because I was not here earlier enough to hear it. But whenever the public benefit test was mentioned, it was very much said, 'Yes, but that is something that does not apply in the normal case.' That was the sort of impression, and that was the stronger impression in the earlier days of implementation.

Senator COONAN—Would you take that on notice and get back to us?

Mr Bell—Yes, I will take that on notice.

Senator COONAN—Do you have any examples you can point to where the work that your association did in recommending how the public benefit test might apply was contrary to any arrangement that the states came to for how the public benefit test was to be administered?

Mr Bell—We did not specify how the public benefit test was to be administered. ALGA does not have the resources to work out that sort of thing.

Senator COONAN—That was my original question: whether or not you had the resources.

Mr Bell—We do not have the resources for that. We have never received any resources in connection with NCP or anything like that. I think we may have even applied for LGDP grants in that area at some stage, but I do not think we ever received any.

The public benefit test is simple enough in theory, but to actually implement it in practice is something which would require some work. We were happy if state departments or state associations in receipt of competition bonus payments took on that role—which they did in some cases—but ALGA did not lay down any particular procedures in that area, short of saying that we believed the public benefit test was an important element in that. We do not believe our role was to go beyond that. We did not have any part in the implementation, only to try to nut out the issues for local government.

Senator COONAN—Finally, I would like to engage with you—except not today—on some of the issues you raised on taxation and on some statements that were made to you by the Treasurer. When you put in your submission, could you identify for us, if you can, when the statement was made by the Treasurer and what the content of the statement was?

Mr Bell—Yes. There was a fairly lengthy exchange of correspondence in that area. My understanding was that the Treasurer's last pronouncement was that these things would be dealt with in the totality of the tax reform agenda and, as I say, that has not eventuated.

Senator COONAN—I am sure my colleagues would also appreciate it if you could deal with that in some detail, because I think it is an issue we need to explore.

Mr Bell—And, as I said earlier, I think the FIPA committee made recommendations in that area which, to my knowledge, have never been taken up.

Senator COONAN—Yes. As I said, today is obviously not the day to engage in any detail, and I think you should have the opportunity to be able to put that in your submission.

Mr Bell—I am really mindful that I am here only really to give a factual account. I am not in the politics of this. It is just a factual account.

Senator COONAN—It is also very difficult when you have not had a chance to do your submission. For all of those reasons I do not have any further questions of this witness.

Senator MARGETTS—Mr Bell, what is your estimation of the percentage of local government activities that will actually fall under the purview of the national competition policy?

Mr Bell—I would not know that offhand. My feeling is that it is not a huge proportion of local government activity, if you are talking about elements of competitive neutrality and that sort of thing, and, of course, competitive neutrality has arguably been the major area of policy action. But in terms of the legislative review and the application of the Trade Practices Act, I would think that the whole of local government falls under those policies.

Senator MARGETTS—We have been told today that the Treasury does not have the resources to have a proper cost-benefit analysis of national competition policy. We have been told today that the National Competition Council does not have the resources to do a cost-benefit analysis, and Treasury will not, but it seems that local government are expected to form arguments to take to the ACCC on a cost-benefit basis. Is that correct?

Mr Bell—Or to the NCC?

Senator MARGETTS—To the NCC in terms of implementation and the ACCC in case of dispute.

Mr Bell—Local government and the ALGA are not party to the NCP agreements. They were signed on our behalf in COAG by the states.

Senator MARGETTS—You do not actually have to?

Mr Bell—We do not have to report. As part of what you are getting at there, I think, with the reports that have come out we believe that there has not been even a terribly cogent assessment of what local government has done in the area of NCP. The NCC have been

actually quite critical of local government in some of the reports and that would probably flow from the information that had been given to them by the states. We do not believe that anybody has actually ever asked the right questions in terms of what is actually occurring in councils. We believe that local government has actually implemented NCP in fairly good faith despite a lot of the difficulties that we have outlined. We believe that we should receive more credit than we have for it. But, in terms of us ever being able to provide a cost-benefit analysis, we know that significant costs have been incurred by local government and we know that we have not been in receipt, in most cases, of the competition bonus payments which, while not intended to compensate, would certainly, in effect, have compensated councils for those benefits. They certainly would have paid councils for the considerable benefits that councils would be delivering to the national economy were those benefits foreshadowed by the Industry Commission and so on to be realised.

Senator MARGETTS—There is another question related to that. I mentioned a case in Western Australia where the state planning authorities were unclear about how this will impact on local councils. Have you got any reporting back from your members about what decision making powers might be changed—say, their ability to make decisions on a local level representing the community? Have you got any reports back on what kind of decision making powers might be changed?

Mr Bell—I am sure I have. None come to mind but I would be happy to place some of those things in our submission. You want case examples; that is fine.

Senator MARGETTS—I am sure people will come up to us with that and that is probably something we could pursue later with specific councils.

Mr Bell—Yes. Where councils have had necessary powers being circumvented in some way—is that what you are saying?

Senator MARGETTS—Or they have fears that that might happen.

Mr Bell—I will take that on notice. I am sure there are a number of legislative review elements where councils may, because of the competition implications, feel they are precluded from undertaking certain activities.

Senator MARGETTS—In a number of issues that I can think of, like Telstra or undergrounding of telephone lines, power lines, mobile phone towers or even airport rules, privatisation and so on, local government clearly know whom they should target in terms of getting a change on decisions. Are there specific issues of accountability that exist for national competition policy that do not exist for these other kinds of issues? Whom do you go to? If you have a problem and your members have a problem with this whole implementation, policing and so on, have you got a clear target that you can go to?

Mr Bell—Our understanding is that the NCC is the advisory body for the implementation of NCP. We have never had huge confidence that the NCC were an impartial adjudicator on these issues. Their goal is to see that the NCP is implemented—certainly that is the way they interpret their goal. We believe that they often take a much harder line than necessary. In fact in the early days when we were speaking to them about the national

approach to these sorts of things, there were things which they said, in their opinion, informally, would fall outside the guidelines for NCP implementation. In the event, these things have actually been done—things like the cut-off thresholds for determining the significance of business activities and so on. I remember having discussions with them when they said that this was not an appropriate approach. In the end that approach was implemented fairly widely throughout the states and it has been acceptable. I do not think we always got the best legal advice from them, nor advice on how to best implement things. It was more targeted towards what was the best outcome for competition.

Senator MARGETTS—What is the line of accountability? Where does the buck stop as far as you are concerned in relation to the implementation of national competition policy?

Mr Bell—The state governments have undertaken, under clause 7 of the competitions principles agreement, to implement the NCP for local government. The state governments are therefore accountable to COAG for the progress they make under threat of removing their competition bonus payments. Local government therefore has to report to the state central agencies on the progress made under arrangements determined by the state governments.

Senator MARGETTS—What success have you had, or have your members had, in going to local governments with the kinds of concerns that you have mentioned? What kind of response do you get from state governments?

Mr Bell—I think the state governments have been much more pragmatic about it—that is my understanding. I could perhaps find out more about this. My understanding is that the state governments have been reasonably pragmatic in their implementation of the NCP. In some cases, maybe not so much in the case of Victoria—as we have mentioned, they may well have had another agenda there—they recognise the sorts of practical difficulties facing local government and have been eager to match the rhetoric that is coming from one direction with the achievement in the other.

Senator MARGETTS—It is interesting. It is a federal legislation and you have to go and argue the case with a state government and hope that that will be acceptable.

Mr Bell—It is something which was implemented by COAG and the implementation was willingly taken on by the states.

CHAIR—You are a representative of COAG, aren't you?

Mr Bell—Yes, we are a member of COAG.

CHAIR—So you were there for the discussions?

Mr Bell—We were there for the discussions—that is a matter of record. In the event, we were not able to sign the agreement. I do not know whether we would have because it was before my time, but we certainly were not able to sign the agreement. It was decided that it would be an agreement between the states and the Commonwealth.

Senator MARGETTS—Mr Samuel said that his understanding is that urban councils in Queensland are very happy with the national competition policy agreement. Is that your understanding?

Mr Bell—Yes, I think the NCP has pushed councils to do some things which they may have done anyway. I am sure they are not happy with all aspects of it. The taxation implications and all that are part of it, I guess. I think the larger councils have probably been reasonably happy that the NCP has given them some ability to do some things which they would like to have done anyway. The only problem is that it probably pushed the agenda so that they had to undertake a lot of these things much more quickly than they would otherwise have done, without proper education of staff and the community as to the benefits and that sort of thing. It has also been a fairly rigorous implementation of competition where the councils themselves may have much more balanced the public interest area than the NCP framework has allowed them to do, in my opinion.

Senator MARGETTS—But there is a difference in relation to how some of the regional councils are experiencing it. What are some of the problems that perhaps exist in regional councils that do not exist in urban councils?

Mr Bell—The classic anecdotal case is that the councils believe that the ultimate effect of creating business enterprises to carry out functions like road maintenance and so on will be that those functions will eventually become the responsibility of the private sector through tendering and that sort of thing, employment will be lost to those areas and that will contribute to the general decline. That is the general fear and they are facing a political backlash from their constituents for that reason. Therefore they are very anti-NCP.

Whether that fear is a true one is not clear. It depends on how NCP is implemented in the individual states and, indeed, what pressures are put on councils as a result of NCP when, for example, they are separating out their purchaser provider stuff or their provider areas and ultimately when they put that to market test somewhere down the track. They are worried that those functions will eventually end up with some big city firm and not with workers who are familiar with the local area and who live and work in the local area.

Senator MARGETTS—Are they reporting a loss of control in their decision making processes?

Mr Bell—Yes, a loss of control and a loss of flexibility in some cases. The case came up about local government being required to provide emergency management. There is a worry that, in the tendering out process, local government's ability to respond with heavy equipment to emergencies such as bushfires and floods would be compromised because these things would be sitting somewhere else and not available for those emergencies.

Senator MARGETTS—There is a range of reasons why councils make decisions and a range of pressures are put on them by their constituents to represent them. How important is price amongst those pressures?

Mr Bell—Rates are a political issue. We have always taken the line that councils provide a package of services to their communities, for which they generally charge a rate, and

people decide on the appropriate balance between the services provided and the rates levied. You would be aware that councils in some states are restricted from increasing their rates and that puts pressure on them. Price is an element, but people also judge the service they receive from the council.

Senator MARGETTS—My reading of the public interest provision is that environmental issues include government policy, which perhaps leaves it fairly open in terms of what that means or whether it restricts any activities. It might be quite difficult for local councils to argue their own environmental policies and preferences with their own constituents against something that might be a cheaper option. Is that something you are hearing?

Mr Bell—Certainly that is a weakness. Although the public benefit test does not lay down the methodology of that test, it certainly implies that there has to be some sort of multicriteria testing where you weigh up the environment against some particular price. It may not be under the environment; it may be community amenity or responsiveness in some other way. Yes, it is a difficult task to accomplish and councils may be reluctant to put as high a value on environmental amenity as they might. There might be some degree of short-termism in the political cycle or whatever which prevents them from doing that.

Senator COONAN—Do you think they would be better off stitched up to some absolute criteria or is it better to leave it at large so that different circumstances can be taken into account?

Mr Bell—I think the current public benefit test framework is quite adequate. If we had any criticism it would be with the way it has been advertised and implemented in cases, as I said earlier.

CHAIR—I wonder if we could digress a little. If I travel around South Australia, I find that the average council rates come in at about \$550 per annum. If I go to Victoria or New South Wales I find that they are almost double that. When I ask various people about the services that councils provide in the different states I find we have pretty much the same size wheelie bin and we have pretty much the same good road network, at least in most of the areas I have seen. We have a number of things like that. Has your organisation done any internal reviews of the rating policies that apply across the whole of the country?

Mr Bell—We have general policies on rates—restrictions on rates and exemptions from rates and those sorts of things—which are nationally applicable, but we do not conduct reviews on rates per se.

CHAIR—I do find it amazing that councils in my state are probably the lowest charging ones. I am not certain about that, but they are certainly much lower than the other eastern states' councils. Would you agree with that comment?

Mr Bell—I do not have the data here, but you may be right. On the surface councils seem to provide the same services, but there is a fair difference between the sorts of services councils provide in different states and the way they are funded. South Australian local councils may be in receipt of specific state government funds, for example, to undertake certain things.

CHAIR—They do not get anything in South Australia; I can tell you that now. It takes dynamite to get money out of the government in South Australia.

Mr Bell—I know of the R&D fund there, for example, but you may be right. In some states there is a return of petrol taxes.

CHAIR—In fairness to the South Australian government, there is a 3c a litre tax in South Australia, part of which goes to local government. I do not think the whole of it does. But the point is that this is an area that is of considerable expense to householders. I wonder whether that is something ALGA could have a look at to see how it varies from state to state. It may be worth analysing because council rates are reaching a stage where they are a very significant part of a family's budget.

Mr Bell—The family also receives significant benefits from those rates. I am not here to justify rates, but it is a legitimate tax for providing legitimate services which the community demands. Many services are necessary to protect the community's health and welfare. There are costs and benefits to this. I do not have any view about whether rates are too high, nor should I. ALGA might be able at some stage to spare some resources to look at the differential services provided and the differential methods of rating.

CHAIR—I am not arguing that the money is not well spent; I am not arguing any position on that at all. I am pointing out what I perceive to be the disparity in council rates and you seem to agree with me about South Australia and the other eastern states. That was the impression I had.

Mr Bell—I could not say for certain but your perception could be correct; I am not doubting it. Also, in different states there are different methods of determining the rates allowed under the local government act. If you live on a particular type of property in a particular location, the way the rate is determined and levied differs from state to state. It may be difficult to ascertain what a typical rate is.

CHAIR—That is right. That is why I was taking the average. Within my own state you will find that from one council area to the next the value of a certain property will give considerably different rating outcomes.

Mr Bell—The rate on the dollar will be different. That is right. That is the beauty of local democracy—there can be a diversity. Communities themselves can decide on what mix of taxation, through the rates, they pay and services they would like within their local area. That is a plus rather than a minus because some communities do not desire as much in terms of services and therefore do not pay as much for them.

CHAIR—It is also a case, too, of what resources are available in particular areas. There are more affluent areas than others. There are some that were built by governments. Roads and so on were provided by government in some areas I can think of in South Australia, so in fact the necessity to provide infrastructure is not as great as it is in other areas. That falls on the local rate-paying population.

Mr Bell—This has always been a role for financial assistance grants, too, from the Commonwealth to try, to some degree, to equalise the capacity of councils so that equal rating effort equals equal services. That has been an explicit aim, in fact, of the financial assistance grants which are to become a state responsibility under the Commonwealth's new taxation.

CHAIR—Has there been any suggestion that someone would look at this from the NCC as to different ratings?

Mr Bell—No, I do not believe it comes under the ambit of national competition policy at all in so far as the local government acts contain the end competitive elements or whatever.

CHAIR—Certainly that would make a difference to a lot of businesses in a number of areas, the amount of rates that they would have to pay. It would be at least an argument as consistent as those of state and federal taxation, wouldn't it?

Mr Bell—Perhaps so. I am not completely following the argument.

CHAIR—The argument is pretty simple. If you have to pay more council rates in particular states, or in particular parts of those states, in fact that is a disincentive to business.

Mr Bell—That is true.

CHAIR—So the argument comes that it is the same as state government taxation which is part of the new taxation arrangements that I understand are being suggested and the new federal government taxation arrangements.

Mr Bell—In our submissions to the backbench tax reform committee and to the Senate inquiries we have advocated that local government be provided, with the states, with more autonomy to determine the rates that apply. As I have said, there are a number of arbitrary exemptions from rates and so on which are not determined by the councils—they are determined by the state government—as well as a number of discounts which are promised by the states but not reimbursed to local government; that sort of thing. We would be quite happy to have more autonomy over those rates and I believe that that would, over the longer term, lead to a smoothing out of these differences that you observe.

CHAIR—I am sure you would like more autonomy. Can we return to one other point? I interjected before, I think on my colleague Senator Margetts, about the COAG arrangements. Am I to assume that what happened with the competition policies was that this went to COAG, and the ALGA was represented at that meeting, but then it was decided to keep this between the two tiers of government rather than the three tiers of government? Is that correct?

Mr Bell—That is my understanding of what I have seen of the history of that, yes.

CHAIR—It might be useful for you to have a look into this, particularly for your submission when you formally bring it before the committee here, so that we know exactly

what role the ALGA played in those determinations and to what extent they signed up with these arrangements. Certainly, as I understand it, they were discussed over several meetings.

Mr Bell—We did not sign up for the agreement; I know that for a fact.

CHAIR—No, there must have been some participation there of the ALGA in those processes. I am just suggesting that I for one and possibly other members of the committee here would like to know what role the ALGA played in those deliberations, or whether they walked out and refused to have anything to do with it, or whatever?

Mr Bell—I do not know what you are trying to get at there, but I do not deny that local government is, in a sense, a party to the NCP agreements, and we have taken the responsibility that that implies quite seriously and councils have implemented NCP. However, there have been a number of problems in implementation which we have tried to bring to the attention of various committees and so on.

Senator MARGETTS—Not the least of which were the revenue implications which they mentioned right at the beginning.

CHAIR—I accept that. Obviously, I think, the further we go out into country Australia, particularly into some of the regions, the implementation of NCP has been much harder. Would that be a fair comment?

Mr Bell—The implementation may not have been harder. The bigger councils probably have a bigger job to implement NCP, but I suppose the expertise to implement it and knowledge of the requirements is thinner on the ground, perhaps, in the rural areas. As I said in my introduction, they have been trying to implement NCP in an atmosphere of general economic decline in many cases which has certainly influenced their views of NCP. They may believe that NCP contributes in some way to their situation.

CHAIR—Have you got any figures for the actual loss of employment of blue-collar workers in council areas?

Mr Bell—It would be difficult to isolate NCP effects, but over a number of years employment by local government has nationally—and this is from memory—declined from about 156,000 about five years ago to about 142,000 today. That is only from memory.

CHAIR—About a 10 per cent decline?

Mr Bell—Yes, something like that.

Senator COONAN—That could be for many reasons, though.

Mr Bell—That is right. I am not saying that is as a result of NCP. There certainly have been other reforms and other factors in that.

CHAIR—Are there any other questions?

Senator MARGETTS—No, thank you.

CHAIR—Senator Coonan?

Senator COONAN—No, thank you.

CHAIR—Thank you very much, Mr Bell. We will adjourn now until 2 p.m.

Proceedings suspended from 12.56 p.m. to 2.09 p.m.

JANSSEN, Mr Erich, Acting Secretary General, Australian Medical Association

CHAIR—Welcome. We prefer all evidence to the committee to be given in public but, should you at any stage wish to give part of your evidence or answers to specific questions in private, you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement at the conclusion of which I will invite committee members to ask you questions.

Mr Janssen—I would like to thank the committee for the opportunity to make this brief submission to supplement our written submission lodged last year. My comments will draw upon that written submission and focus on two major issues: firstly, the structures that exist within the medical and health system, their impact on the quality of health services and the relationship of those structures to consumer protection and consumer choice; and, secondly, the impact of competition policy on employment and contractual arrangements.

International benchmarks would indicate that Australia has a high quality, cost-effective health care system in terms of inputs and outcomes. We spend about 8.5 per cent of gross national product on health. This is about average for OECD countries and just over half of that spent in the USA, which is a country generally regarded as having embraced competition policy quite fully. Australian expenditure has largely remained constant for the last six years, and the evidence suggests it is not escalating out of control.

While it is difficult to use international benchmarks because of the differences in the way health care is delivered, there is a widespread view, certainly in Australia and in many Western countries, that Australia's postgraduate medical training is of a high standard and, as a consequence, that Australia's medical work force is of a very high standard in terms of skills, competence and quality.

There are issues of concern in Australia's system relating to the poor health status of our indigenous population, limited immediate access to a range of health services by those living in non-metropolitan areas, waiting times for some elective surgical procedures in the public sector, consumer concerns about aspects of the way health services are delivered, adverse events in health care and the varying rates between different communities for specific medical interventions.

The AMA considers it is unlikely that more vigorous enforcement of competition policy across the health sector will contribute significantly to the resolution of those problems. The fact is that medical services in the Australian system are not delivered in the classical free market. The existence of a universal health insurance scheme through Medicare results in over 65 per cent of funds for health services being provided by government either directly through Medicare rebates or through grants to state public hospitals or a range of other programs.

Advocates of competition policy believe that enhanced competition among doctors and the removal of the legislative and professional structures that regulate the medical profession are necessary if health costs are to be contained and if competition is truly to prevail. Competition policies are sometimes supported on the grounds that they will provide a shift in the power balance from providers, that is, doctors, to consumers, that is, patients.

For example, it is assumed that consumers, in order to maximise total utility, will always act on the basis of self-interest, that they will use their own money to buy all goods and services and that they will seek the best price quantity-quality combination. Similarly, it is assumed that providers, primarily concerned with their own interests, adapt their prices and throughput in the light of consumers purchasing, act to maximise profits by increasing market share at acceptable prices and will always seek to use labour and resources sparingly.

In the context of the massive government intervention in the medical services and health market, these assumptions could not be said to be generally applicable in the area of medicine. Generally, individual patients do not behave like typical consumers. Ordinary people cannot always understand the complex health field, their needs are immediate and decisions must be taken under difficult personal circumstances, and they become dependent on doctors with whom they have established ongoing relationships and who are committed to making judgments in their patients' interests.

In this context, the AMA considers that the structures which regulate the profession, such as medical registration and royal colleges in their role in training standards, accreditation, recertification and continuing medical education of doctors, provide considerable protection to patients. The AMA supports measures to enhance the ability of the public to make informed decisions on their medical services choices but considers there is limited scope to improve public knowledge to the extent necessary to substitute the protection these structures provide to the community.

Accordingly, we submit that in the process of review required under the national competition policy of state professional registration and similar legislation, and in the activities of the ACCC in assessing the current medical structures such as the training and standards roles of the medical colleges against the Trade Practices Act, the welfare of and protection offered to patients through the focus these structures have on quality should be the primary consideration.

The AMA does not believe that reliance on consumer protections through possible actions over misleading advertising, or the like, will in any way adequately protect patients and ensure they receive the best quality health and medical care that our society can provide. The regulatory structures that currently exist provide the best protections for the public.

Another area of specific concern to the AMA is the effect of competition policy on employment arrangements generally, and the process by which state governments acquire medical services for the public hospital system in particular. When the competition reform legislation was first before the parliament, the explanatory memorandum to the legislation suggested it was not intended to affect the public hospital services, which are funded totally by government and are provided to the community free of charge.

Traditionally, the public hospital system has engaged doctors through two major mechanisms. The first major mechanism is the direct employment of doctors on a full-time basis, either as junior doctors in the hospital system during their training period, or as staff specialists with ongoing appointments who work as employees under industrial awards.

The second major mechanism is the engagement on either employment contracts or other forms of contract of private practitioners, particularly specialists, to provide services to public hospital patients. These services of visiting medical officers, as they are termed, have generally been acquired on the basis of contractual arrangements which have been negotiated on a state wide or hospital wide basis. Most state health administrations are comfortable with this process. Where the relationship between the doctor and the hospital has traditionally been identified as one of common law employee-employer under an individual contract, the orderly process of negotiation of standard service contracts has continued.

Since the introduction of competition policy, however, the ACCC has taken the view that where such negotiations involve contractual arrangements which are not clearly employer-employee and fall within the scope of the Trade Practices Act, by definition they are anticompetitive. This view is taken even in circumstances where state health administrations and governments have indicated they consider it the most effective process for securing public hospital medical services.

There are some unresolved legal issues concerning the jurisdiction, or lack thereof, of the Trade Practices Act in relation to these contracting arrangements, as the provision by governments of services to public patients could generally not be regarded as a business, trade or commerce. Even leaving aside that matter, the enormous deregulation in industrial relations and employment arrangements in all Australian jurisdictions in recent years has given rise to a range of individual employment contracts, quasi-employee arrangements and independent contracts applicable to visiting doctors in the public hospital system.

This deregulation and the expansion generally in contractually based arrangements between employers and their staff is by no means restricted to health. It affects all industries and many workers, and has had the effect of bringing many arrangements, which were formerly clearly employment arrangements, within the jurisdiction of the Trade Practices Act. The determination of conditions of service for employees are specifically exempted from the operation of the Trade Practices Act under section 51(2A).

The AMA considers that the national trend towards a variety of quasi-employee and contractual arrangements, which is being promoted by governments, is blurring the definition of employee. It requires an amendment to the provisions of the Trade Practices Act in relation to the negotiation of remuneration and conditions of employment to reflect this change.

The AMA considers that the Trade Practices Act, and specifically section 51(2A), should be amended to ensure that it operates to protect the longstanding process of collective dialogue between groups of employees and their employers in all industries, consistent with Australia's International Labour Organisation obligations to facilitate collective bargaining of labour contracts. This amendment would simply require a reference to contracts wholly or principally for labour being exempted from the Trade Practices Act rather than contracts in relation to the remuneration and conditions of employment of employees. This approach would be consistent with both the definition of employee for the purposes of taxation legislation and pay-as-you-earn taxation, and the definition of employee for the purposes of the superannuation guarantee legislation.

It should be noted that most of these quasi-employees, including visiting medical officers, are treated as employees for tax and superannuation purposes, yet many are treated as businesses under the Trade Practices Act. The amendment proposed would enable the orderly process of state government acquisition of medical services for public hospitals to continue and, arguably even more importantly, allow workers generally to enter into collective negotiations with their employers over quasi-employee labour contracts, consistent with Australia's obligations under ILO declarations.

That concludes my submission here today. I would be happy to take questions on matters I have raised in that verbal submission, or in the written submission we lodged earlier.

Senator MARGETTS—I am sure Senator Mackay will be following up on questions in relation to collective bargaining. I would like to ask you whether on a number of these issues you have been liaising with any health consumer organisations?

Mr Janssen—In relation to our specific submission, we have not.

Senator MARGETTS—That would be interesting to see, because Mr Samuel today indicated that organisations or groups like doctors are just protecting their own privileged positions from a vested interest. If I understand correctly from your written and verbal submission, you are saying there are specific health and consumer issues involved here.

Mr Janssen—That is right.

Senator MARGETTS—You are not arguing from your own vested position. You are arguing from a health outcome position.

Mr Janssen—I guess we are arguing from both perspectives to some extent. Primarily, we are saying that on the issue of the regulation of doctors generally, whether it is through maintenance of standards through medical colleges, or whether it is through state based registration of doctors under legislation, they are in our view the most effective way for protecting consumers.

We are simply saying that there is little likelihood that a program, for example, of consumer education around those sorts of issues would be sufficiently successful to fully substitute for the sorts of protections in terms of quality and standards they have through the existing structures. We are simply saying that that should be recognised in the review process that is under way at the state level of the various items of legislation, and, secondly, that that should be recognised by the ACCC in its analysis or examination of arrangements that might come to its attention in that area.

Senator MARGETTS—Mr Samuel also suggested that a large part of the problem with people who are worried about the implementation of national competition policy is that people do not understand or are not utilising the public interest provisions correctly or adequately. I assume your organisation has got legal advice. Is it that you simply do not understand the public interest provisions, or do you think there is an inadequacy of protection under the public interest provisions?

Mr Janssen—We have had a recent experience in relation to certainly the ACCC's interpretation of the public interest provisions. That was in the matter of an application for authorisation we sought on behalf of general practitioners in rural areas in South Australia. In that state those general practitioners in small country towns servicing 65 public hospitals have generally had their relationships with those hospitals assisted, or the negotiation of those arrangements take place centrally between the South Australian Health Commission—and it has changed its name since then—the Australian Medical Association and the Rural Doctors Association.

All the parties to that have felt that, in the course of that application for authorisation, that was the most efficient way to go for various reasons, notwithstanding the logistics of simply trying to negotiate hundreds of separate individual contracts at a hospital level in very small country towns, where the hospital board is made up of local community people who may not have expertise in that area.

In the end, we put a lot of evidence and material to the ACCC in relation to what we saw as the public benefits of that, some of which included the contract stability and predictability of those sorts of arrangements. This would assist these small country towns in attracting the investment of doctors in a practice, for example, privately when they understand that they have a well-developed process for their contractual arrangement with the public hospital. There were also a series of other issues that we raised.

We felt the ACCC's assessment of the various public benefits that we described that accrue from this arrangement was very narrow. They sought to compartmentalise, for example, a benefit such as the one I mentioned in relation to contract stability and making it easy for doctors to make the decision to go to these country towns. Particularly, as a contract expires, they are not put in a situation of having invested in property and a practice to have the hospital then say that they can squeeze the price down now that they have made a commitment to the community.

We found that the ACCC's interpretation was that there needed to be a direct link between the benefits of attracting doctors to that town and the specific provisions in the contractual arrangement. In other words, we had to show that there was a causal relationship between the contract that might be negotiated—albeit as a model contract to the state and that could be varied by individuals—and the benefit. Of course, it is not that simple.

The benefits accrue from that cooperation between the profession generally and the health system in that state generally. That cooperation rests on a number of foundations, one of which is the contractual business that the profession collectively has traditionally negotiated. There are a series of other foundations of that relationship to do with public health initiatives, programs the states are trying to run in terms of discharge planning out of hospitals, and a whole series of things. All of these things together give rise to the benefits.

Senator MARGETTS—Can I just clarify? You are having to argue these directly with the ACCC?

Mr Janssen—We have.

Senator MARGETTS—So, unlike the implementation stage, you cannot go to the states and ask for some sort of understanding?

Mr Janssen—We could, and we did. We have approached some states. As we understand it, with the substantive funding attached to the implementation of a competition policy, states are very reluctant to put structures in place which may be regarded by the Commonwealth as not meeting their obligations under the competition code.

Senator MARGETTS—So they handed you to the ACCC again?

Mr Janssen—They cooperated with us and they supported our authorisation application, which in the end was only granted for a very limited period to June this year. Contrast that with New South Wales, where visiting doctors again are under contractual arrangements, but the state has legislation there—and it has been around for a long time—that does provide for a process of collective determination of service contracts.

I think it is the Health Services Act or something like that in New South Wales. It is fairly recent legislation and this provision has been in earlier legislation. Were it not for that, there would be a major difficulty in the public system in New South Wales, where we have something like 5,000 visiting doctors providing services. Were that legislation under any review that might take place under competition policy to be altered, there would be a very significant problem in the state of New South Wales in engaging the bulk of their specialist and rural general practitioner services.

Senator MARGETTS—What kind of resources is the AMA having to put in to argue this case?

Mr Janssen—In the South Australian case, it was an enormous resource. We had to engage a firm of economists to help us with developing some of the economic arguments. We have put enormous resources from our own secretariat into it. We had to get legal advice through the process. Our conclusion at the end was that, in light of the very narrow interpretation of the public interest test that was taken in that case, we are not recommending authorisations as a viable form of trying to deal with these issues.

Senator MARGETTS—How does this affect you during this process? Are you able to be forthcoming with the government about dealing with issues in a proactive way in the future?

Mr Janssen—It becomes difficult. In the case of South Australia, the health administration there and the government want to have a relationship with doctors on a profession wide basis in relation to getting services into the public hospitals.

There are some difficulties in how much we can now assist them in that process. The ACCC, having gone, in great depth, into the arrangements in that state, now have available to them an enormous bank of information. If they choose to look more closely they may wish to open up or question whether arrangements that may be put in place for future years would meet their requirements under the act.

Senator MARGETTS—If you ask them, they might tell you, or, they might think ‘That is interesting. I had better look into that.’

Mr Janssen—I think we have gone through that process with the ACCC and we are trying to do the best we can now with the state health administration in that state and in other places to help them out in terms of settling these sorts of issues.

Senator MARGETTS—What is your understanding, and I guess you have had meetings with the ACCC, of the level of expertise that the ACCC is able to bring in deciding on health outcomes in relation to public interest?

Mr Janssen—I guess the experience of the last year with the South Australian matter would suggest that the ACCC at that stage was going through an enormous learning curve. It will probably still need to go through that in order to properly be able to assess these sorts of arrangements, because on the surface they just simply see it as a straight law enforcement issue. The law says any arrangement between allegedly competing businesses is *prima facie* anticompetitive. That is where they start and finish. We found difficulty in explaining that to the government of South Australia, the Crown Law Office and the South Australian Health Commission. We were not successful in explaining that there are significant public benefits to the people of South Australia and certainly the rural communities in that process.

Senator COONAN—Does that ruling of the ACCC have a determination number or is there some way that we can have a copy of it so that we can understand more properly the arguments that the ACCC advances?

Mr Janssen—Yes, I can send a copy of that to the committee.

Senator COONAN—Thank you. I would like to see the ruling before I challenge you or otherwise deal with the sorts of matters that you, quite rightly, bring forward to us. I want to get your ideas and input into what I think is a very useful attachment to your submission—that is, attachment 3 which deals with competition in health, ethical aspects. I particularly draw the committee’s attention to the paragraph headed ‘The norms of medicine’. I asked an earlier witness today whether competition policy proceeds on the basis that one size fits all and whether there are some areas of activity that we have in society—medicine may be one indeed; some aspects of law may be another—which might not be a good fit with the principles of competition. In fact, this paragraph seems to deal with that where it says:

. . . medicine is practised subject to very rigorous constraints.

It goes on:

This complex self-generated system of professional norms primarily reflects the altruistic concern of doctors to separate personal and financial considerations from the paramount professional goal of doing what is best for patients. They also, undeniably, have the effect of protecting doctors’ financial interests. They do not prohibit competition, but rather channel it into non-economic forms, such as competition for reputation, recognition and status, and in some cases, perhaps, power.

Against the background of that paragraph, I want to ask about the operation of the colleges and the very clear restrictions that the colleges put on entry of students for training. I think

one of the great problems seen—perhaps from the principles of competition—certainly in the practice of specialist medicine, is that access is so restricted. Can you comment on that?

Mr Janssen—Yes, I can to the extent I have knowledge of the area. There is a lot of debate about the college entry and selection process. I think a couple of things need to be understood about it. I guess the role of the colleges is to establish a standard that trainees need to meet in order to be accredited by the college. They establish that through network supervision and mentoring of trainees, or registrars as they are called in the hospital system, but they do not fund the position itself.

In order to accredit a registrar position in a hospital, the college needs to be satisfied that there are, for example, sufficient clinicians in that particular discipline available to provide supervision and teaching. That is done, generally, on an unpaid basis. In those circumstances, the learning objectives of the college training program can be met.

The number of positions in the state hospital system for hospital disciplines is based on the funding decisions of the state public hospitals. In other words, if hospitals or state administrations do not engage sufficient specialists at the particular hospital in a discipline for which training may be sought, the college standards, as to the level of supervision, may not be met. It then becomes a question of funding. The state needs to make decisions as to how it allocates its funds.

In the end, the employment of young doctors in registrar positions is one for the hospital. The college does not have a say in who gets employed. The trainee needs to complete an examination so that they have passed what they call their primary examination to be eligible to be in the program. They then have to find a position in the hospital system to undertake the work that has been accredited and that meets the college standards. It is a combination of factors in the hospital environment.

If we go to general practice, it is quite a different thing. Again, the college has a similar role in that it accredits training practices. They need to have sufficient supervision. There is development now of a contractual relationship between the college of GPs and the training practice that sets out the training requirements, the teaching times and so on. It also seeks to ensure that the trainees do not see too many patients and that it is true training. The total number who are able to be put into that training program each year is determined by the Commonwealth government.

Senator COONAN—So you are really saying that it is a self-limiting situation?

Mr Janssen—Yes.

Senator COONAN—So you could not have an intake of more people than you can fund?

Mr Janssen—True. The general practice program, specifically, is limited to 400 places per year by the Commonwealth government in the terms of grant when it provides funds to the College of General Practitioners to run a training program. The GP training program is the only one that has an interface with the Commonwealth. All the rest are state based.

Senator COONAN—They are private, aren't they?

Mr Janssen—Their relationship is with the state hospital system.

Senator COONAN—Is there any review at all of accreditation decisions taken by the various specialties or do they just have within their own processes some evaluation criteria?

Mr Janssen—Is this in terms of certifying?

Senator COONAN—Yes.

Mr Janssen—There is, as I understand it, a process, once the trainee has finished their training, of meeting the college standard. I understand there are appeal mechanisms available within colleges. There have been, in the past, cases that have ended up in the courts over access to training programs or those sorts of decisions.

Senator COONAN—That was my understanding—that that had nothing to do with state health authorities at all; it was really a private matter.

Mr Janssen—Yes. The standard setting is a college matter—maintaining the standard of health, of the training and of the specialists.

Senator COONAN—It can be perceived—it may not be correctly perceived—as a very effective way of shutting out otherwise worthy and available people who want to undertake specialist courses?

Mr Janssen—I think there has been a perception that that is the case. I think that perception has been acted on by the colleges as well. We had a meeting here in Canberra with most of the colleges only two weeks ago where it was agreed that the AMA should talk to each of the colleges about trying to ensure that their processes are more transparent and that the community can then be reassured that decisions over competency and accreditation are made through an impartial process. That is an initiative that we have kicked off most recently after the federal council of the AMA has determined that that is what the AMA should be doing.

Senator COONAN—There is one other area that I wanted to ask you about. It was a general point you made in your submission and I thought you might want to give some examples or at least firm it up a bit. At point 2 you say:

The characteristics of the relationship between doctors and patients is not essentially an economic one.

And I think we would all agree with that. Further:

The AMA is concerned that that focus of National Competition Policy on the economic dimension of this relationship—

that is with the patient—

may have a detrimental effect on the quality and nature of medical service delivery.

What were you referring to there? Are you able to point to some adverse impact? Is this a general concern or is there some specific aspect of competition policy that you can point to that is adversely impacting on the doctor-patient relationship?

Mr Janssen—It is more general, but I would point to, for example, the way doctors might be granted admitting privileges or what they call clinical privileges to a hospital. Currently, this is done by a clinical privileges or credentials committee at a hospital. It is made up of a variety of disciplines, plus the administration, utilised in the hospital. The process is that they assess the qualifications and the clinical competency of the doctors that may be appointed with bidding rights at that hospital, public or private.

Technically, the ACCC would look at that under the existing Trade Practices Act in that here is a group of competitors deciding who gets to practise in that hospital. As I understand it, the ACCC has some concerns and is looking at a number of these procedures and at the sort of peer review process that ensures that standards are met. The standards that they apply in this peer review are the ones that colleges have set externally. That does not sit well with the concept that, technically, these doctors are in competition and that they are then deciding who does or does not have access to provide services and, hence, work in a hospital. That is an example of where, if we are not careful, we will lose one of those quality checks through the system, which will have an adverse impact ultimately on patient care.

Senator COONAN—Do you think that that could be consistent with opening it up to competition? I mean, peer review is not consistent with competition.

Mr Janssen—Not really, no.

Senator COONAN—It has to be a closed shop in order to keep up the standards. Is that what you are saying?

Mr Janssen—People need to be able to interpret a person's clinical experience and qualifications in the context of standards that are set externally by the colleges. I do not think that is something you can easily subcontract out to some firm. I am simply saying that that is a standard process in the way clinical privileges are given in hospitals. That sort of process is construed or could potentially be construed as being anticompetitive.

Senator COONAN—Is there any move, in assessing clinical privileges or access to clinical privileges, to looking at opening it up or is it just going to stay as a standard practice until the ACCC comes down on the doctors like a ton of bricks? Is there some movement to try to change it or is it just going to stay like that?

Mr Janssen—It is unclear what the ACCC wants to do in that area. What came out of our meeting two weeks ago with the colleges was that they want the AMA to start detailed discussions with each of them, and with state health administrations, over the potential for providing some form of protection for these processes at a local hospital level. I am not looking simply at immunity from the Trade Practices Act but there are clinical issues as to why a group of peers feel that a particular practitioner has not met a standard. There is also a review process of existing practitioners that they can somehow be protected from other litigation that might be taken against them for all sorts of reasons. We are seriously looking

at how we can ensure that the product of that process, which generally has been fairly good in Australia, can continue under the various pressures.

Senator COONAN—I suppose it is a fair comment with all the professions, isn't it. You do not want competition to promote incompetent people.

Mr Janssen—That is right.

Senator COONAN—It is a very serious point. By the same token, I commend you, if indeed this is the process you have described, for looking at how it could be opened up a bit more. I would like to ask you some questions about the determination when we get it, if we can get back perhaps.

CHAIR—I think it would be fair to say from reading your submission in October last year that the ACCC and the AMA are not necessarily going to exchange Christmas cards with each other. It is obvious that the ACCC has stirred up an absolute hornet's nest in your area. Just from looking at the submission, it appears there are problems in a whole range of different areas. You suggest that in South Australia the relationship between the various visiting specialists to the hospitals—and I presume GPs as well—and the South Australian Health Commission was interfered with by the ACCC. I wonder if you could give us more details on that, please?

Mr Janssen—It is primarily related to GPs. Interestingly, the private specialists in South Australia are under employment contracts in their contractual relationship with the public hospital system in South Australia, and because they have been described as such under an exemption in the Trade Practices Act they fall outside this process. These are specialists in the teaching hospitals in Adelaide—they are all in Adelaide.

So we are looking at the general practitioners servicing the 65 country hospitals in that state who are on contracts not that different from those of specialists in the city and whose relationships are not that different from those of specialists in the city but who, because the description of the contract is one of principal and contractor, not employer and employee, are considered in a different light and, according to the ACCC, fall within the jurisdiction of the Trade Practices Act.

And there is your dilemma: you have very similar arrangements; you have the same buyer, the state in each case, but on the one hand a contract that does not look very different from the other contract and is regarded as fine—they can collectively put together an arrangement with the state—and on the other hand a contract that, although it looks similar to the other one, because it has generally been regarded as one of principal and contractor, cannot follow that process.

CHAIR—So let us get this right: what you are saying is that the GPs can collectively bargain but the specialists cannot?

Mr Janssen—No, I am saying that the specialists can because their contracts in the teaching hospitals in South Australia have traditionally been regarded as employment contracts—even though they are individually entered into, there is a collective process to

arrive at them—but, because the relationship between the country GPs in the small town and the hospital has generally been described as principal and contractor, not an employment relationship, they cannot put together a contract with the hospital. That means that the GPs in a small country town which may have two medical practices with two doctors in each—they might be the only doctors in that district—cannot get together with that particular country hospital to work out how they can service that hospital on a 24-hour, seven days a week basis.

CHAIR—Is this different in other states, or is it that the ACCC has paid a bit more attention to South Australia than to the other states at this stage?

Mr Janssen—Its attention to South Australia was generated by our application for authorisation of collective bargaining for that group.

CHAIR—You brought it on yourself?

Mr Janssen—We, in good faith, went into that process—as the law provides—and I have described the outcome. It is a bizarre thing that some doctors in the state of Victoria have contracts which are regarded as employment contracts—I guess they write it in there—yet other doctors have similar contracts but are generally regarded as independent contractors and are not able to bargain collectively. You have this all over the country. It is only in New South Wales, where there is legislation that specifically provides for independent contractors to collectively determine their contracts with the health department, that we do not have that sort of issue. It really depends on whether they are regarded traditionally as independent contractors or employees.

This is not unique to medicine. With the encouragement by governments of individual contractual arrangements, a movement away from awards and enterprise agreements to individual provisions, there would be many people in construction, in the transport industry and in other industries, the liquor and hospitality industries and so on, that would be facing potentially similar difficulties of having arrived at individual arrangements under common law with employers which may be on that divide between employer-employee relationship and some sort of contractor. That is going to be a trend that we will see in Australia with the progressive deregulation of industrial relations that is occurring. And they will potentially be caught up in a situation where they will not have the ability to collectively bargain.

CHAIR—In relation to some of the colleges, one of the arguments that has been put forward is that in certain areas of medicine—orthopaedics is probably one of the better examples, and ENT and urology—these are very restricted; that, irrespective of the funding arrangements, the number of persons accepted into these colleges is artificially low so that it maintains the income levels at the other end of those that have been through the system.

Mr Janssen—I have described how the training process works and how positions are created. I would say that in recognition of the problem of specialties in some particular disciplines being in short supply, the Australian Health Ministers Advisory Council has established the Australian Medical Workforce Advisory Committee, known as AMWAC. That is made up of representatives from each of the states. There is a paper from the chair of AMWAC in our submission. Their job is to look at issues of shortages or projected shortages

in various disciplines, trying to match that to expectations of demand in the community, and to make judgments about what is needed in terms of expanding numbers of training positions or otherwise. They then report back to the states and to the Commonwealth, and I guess funding decisions are then made around expanding those training numbers.

They are progressively going through each medical discipline. I think they have done six or seven of the major ones, including orthopaedics, and they have made recommendations about the number of training positions that they would see as necessary to meet future demand. My understanding is that, in each case, the state health administrations and the colleges concerned are cooperating to implement those recommendations to expand, where it has been identified as necessary, the number of training opportunities. That effectively means funding for training opportunities and funding for supervision and so on in the hospital system. So there is a government-run orderly process for trying to manage this issue of marrying numbers of specialists in specific disciplines with needs in the community. That is, again, quite a transparent process. It is not run by us. It is not run by the colleges. It is run by a government organisation.

CHAIR—Is there the same transparency around the admissions to these courses? What I have been told by medical friends of mine is that it is not necessarily the brightest people who get into these courses but quite often it is the ones whose fathers were in these courses or, in some instances, mothers, and all the rest of it; that, in fact, there is a fair degree of lack of transparency in the way that people get into particularly some of the surgical courses.

Mr Janssen—Certainly those accusations or those comments or observations have been made in the past about this. The AMA, it should be clear, represents the majority of junior doctors in Australia who are actually voluntary members of the AMA. It is a very big group of ours, making up almost a third of our membership these days.

Particularly after the restriction on provider numbers—and I need to set this context that occurred a couple of years ago—there was a concern that insufficient training places would be available to ensure that young doctors could ultimately practise under Medicare. So there was an increased focus from our office on ensuring that, firstly, there was a truly competitive selection process for entering into colleges and, secondly, that there were sufficient training places available.

In response to those concerns the government put in place what is called the Medical Training Review Panel. It is a statutory based panel, under the health act I think, which has the job, among a number of things, of assessing effectively the requirement or demand for training places and the number available. They have done a number of other things. We are represented on that panel. One of the jobs that was undertaken early in the piece was the review of college selection processes. A working party was established of a number of junior doctors, senior clinicians, health department people and so on, and a consultancy was let—they put terms of reference together for a consultancy—to examine the selection processes of all the colleges.

As a consequence of all of that, a set of standards have now been developed which are being put forward as the minimum that colleges should be meeting in order to ensure there is sufficient transparency in their process to show that all selection is on merit and so on. The

colleges are currently considering that set of standards. The advice I have received is that they are generally acceptable, that they have no difficulties in meeting these equity and merit standards that have been established externally by the consultancy for the MTRP.

So there is a recognition of that perception and there has been significant work to try to improve things and to make it clear that access to college training programs is based on merit and on absolute standards and that if you meet those then you are in. That has not necessarily filtered through to the community yet in terms of perceptions, but that process is well under way.

CHAIR—Thank you very much.

Senator MACKAY—Can you run through for us again the link or nexus between the deregulation of the labour market and the incapacity of contractors to collectively bargain, and your reference to the ILO conventions?

Mr Janssen—I will start with the situation of independent contractors. Under previous federal industrial relations legislation there was some scope for independent contractors to have access, through the normal industrial relations process, to redress unfair contracts and these sorts of things. Because of the existence of that provision, generally there was no major issue, certainly in the area of medicine and in other areas there was some sort of collective process, and unions were entitled to enrol as members independent contractors who ordinarily would be eligible for membership were they employees. That has gone—the new Workplace Relations Act does not have that provision in it.

At the time, I understand, there were amendments proposed through the Senate to the Workplace Relations Act to make clear what I have indicated should be made clear, that is, contracts wholly or principally for labour should come under the jurisdiction of the industrial relations process for determining things, not under trade practices. That amendment was not successful. As a consequence, then, of the expansion of the trade practices legislation to individuals who might be regarded as being in a business, those people who are independent contractors or who might be regarded as that under law—and there is always a grey area—do not have the benefit of being able to bargain collectively, even though they may in the past have done so or may in the past have been clearly in an employment relationship doing the same work. There is the nub of it.

I guess we are seeing in the latest announcements what might happen, industrial relations wise, federally. States also have an agenda—in Western Australia, Victoria and so on—of significantly deregulating and to some extent eroding the opportunity for workers to collectively bargain. Increasingly, individual arrangements are being put in place. Contractual arrangements, where there is no award, would be placed on common law. Depending how it is structured you can get a legal person to look at it and say, ‘That doesn’t look like an employment relationship; that is an independent contractor,’ while another lawyer in another place looking at the same contract might say, ‘On balance, that looks like an employment relationship and, yes, a group of you can negotiate together on those sorts of arrangements.’

There is the difficulty: we are seeing extension of trade practices legislation at a time when we are also seeing an expansion of these quasi employee, grey area types of

contractual relationships. And that is where I think we need to redefine the exemption in the Trade Practices Act to refer to contracts for labour or principally for labour, just the same way that many years ago the taxation legislation was amended to ensure that it did capture those labour relationships between people, and the same way that the superannuation guarantee legislation also catches those people.

The VMOs that are regarded as businesses in South Australia in the country hospitals, and hence the GPs that are not allowed to collectively bargain, receive the superannuation guarantee payment from the hospital they work at. In many cases, visiting medical officers are paying pay-as-you-earn taxation. Yet when it comes to their relationship industrially with the hospital, they are regarded as being a business for the purposes of the Trade Practices Act and are prohibited from collectively seeking to negotiate arrangements.

Senator MACKAY—This is very interesting because, when the Workplace Relations Act was being debated as a bill, I actually cannot recall this particular example arising of rural doctors being able to collectively bargain in the way that you describe. Can you, Senator Margetts?

Senator MARGETTS—There were some other examples. I recall there being some examples used from Western Australia about roof tilers and so on, who were artificially being created—

Mr Janssen—That is right.

Senator MARGETTS—as small businesses but in reality were just workers like anyone else.

Mr Janssen—Just providing their labour.

Senator MACKAY—It is very interesting. So what you are proposing would require a change to the Trade Practices Act, or it might actually be solved by an amendment to the Workplace Relations Act?

Mr Janssen—As I understand it, that is an option, because that is what was proposed by the Labor Party, I think, at the time the legislation was before the parliament. The other way, to make it absolutely clear, is to amend the Trade Practices Act to bring it in line with the taxation treatment of the employment relationship and the superannuation legislation treatment of the employment relationship.

Senator MACKAY—So your preference would be an amendment to both acts to make it absolutely clear, or are you happy with the Workplace Relations Act as it stands?

Mr Janssen—My view would be that the Trade Practices Act would need to be the area where this happens, because that is the legislation that is impacting on this relationship most. These doctors, these visiting medical officers and so on, generally are not covered by awards or enterprise agreements that are registered before tribunals.

The history has been that heads of agreement tend to be reached between either the AMA or other organisations and the health administration—unregistered agreements and, to some extent, just understandings as to how the system is going to work—then contracts are offered individually to doctors and they can then amend and negotiate something locally, but 90 per cent of the issues are settled. So they generally have not been involving themselves in the industrial relation system—unlike the roof tilers who, in the past, would have been; or the subcontractor on a building site whose relationship was that of an employee to a contractor and now, for various reasons, is a subcontractor still doing the same work but is unable, with other subcontractors to the same contractor, to talk to them about remuneration or these sorts of things.

Senator MACKAY—And essentially it is your contention that this inability to collectively bargain is a contravention of ILO conventions?

Mr Janssen—As I understand it, Australia is a signatory to various ILO conventions, and they do provide for the maintenance of rights to collective bargaining in this country. I guess the convergence of events that I have described would suggest that those objectives may not be properly being met in this grey area that has emerged as a result of the deregulation of our system.

Senator MACKAY—That is fascinating. Thank you.

CHAIR—Thank you very much, Mr Janssen. That was a very stimulating session and I look forward to maybe seeing you and the AMA further down the track.

Mr Janssen—Thank you very much.

[3.05 p.m.]

HUNTER, Mr Donald Henry, Executive Director, Australian Council of Professions

CHAIR—Welcome, Mr Hunter. We prefer all evidence to the committee to be given in public, but should you at any stage wish to give part of your evidence, answers to specific questions, in private, you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement and at the conclusion of your remarks I will invite committee members to ask you questions.

Mr Hunter—Thank you. The council welcomes this opportunity to appear before the committee. You would have noted from our written submission, in particular from the front page, that the Australian Council of Professions is a peak body, the constituent bodies of which are some 13 professional associations.

Those associations tend to fall into three broad groupings, one being the health services area, the second being the construction and design areas, and the third being the finance side of things. The constituent bodies have different positions in relation to the application of national competition policy as a result of the difference amongst them, but the council's broad role is to distil issues of generic concern to those professional associations, and arguably the national competition policy is one of the most important.

In our submission to you we have tried to bring out the importance that our constituency feels there is about the question of professionalism in this country, and that the highest professional standards that exist here are a public good and as such should be defended and nurtured.

So far as the professions of the council are concerned, the question of public benefit arises in two distinct areas at the moment. One, of course, is the question of compliance under the Trade Practices Act. In that context the council's role is basically one of consultation with the ACCC in two areas. Firstly, we consult with it in terms of maintaining the idea that in approaching its regulatory responsibilities it is important to take note of the fact that there is more than price involved in terms of the application of the Trade Practices Act.

Secondly, we consult with the ACCC in the area of education. We see it as part of our task to assist in ensuring that our professional associations and their membership, which total well in excess of 200,000 practitioners throughout Australia, are aware of the provisions of the Trade Practices Act as they stand from time to time and the implications for professional practice arising therefrom. In this compliance area, the council has membership of a consultative committee set up by the ACCC to bring in various industry sectors to participate in the consultation process. We are also members of the ACCC Small Business Advisory Group.

I just make those points to indicate that there is well-established dialogue between the council and the ACCC in these broad areas. I welcome very much Mr Samuel's complimentary comments earlier today that in general terms the professions have been going about seeking to meet the requirements of the Trade Practices Act so far as they are affected.

The second area where public benefit questions arise, and which is basically the area dealt with in our submission, stems from the COAG activities in reviewing legislation. This process has been going on for some 18 months to two years now and many of the considerations that affect the professions were alluded to earlier today, again by Mr Samuel.

Our basic position in relation to the review of legislation affecting the professions is that it is in the community's interest that these reviews be done on a national basis. That has been our attitude for some considerable time and we have articulated it in a number of different ways and in a number of different fora.

Eighteen months ago, when this legislation review process got under way, we became very concerned at the prospect of nine separate jurisdictions, and any number of departments within those jurisdictions, and any number of public servants within those departments within those jurisdictions, all operating in glorious isolation in basically determining where the public good lay.

Our concerns at that time were based on what appeared to us to be a lack of consistency in the terms of reference that were being drawn up in relation to particular reviews, and these concerns have continued largely until today. It is our pretty clear impression that this process is being driven largely by the thought of the competition dividend to be received at the end of the day once signed off by the National Competition Council.

Some 12 months or more ago we entered into fairly close consultations with the National Competition Council, and with Mr Samuel in particular, to see whether in the context of the processes of the council something could be done to get more consistency or coherence into this legislative review process. Mr Samuel was very helpful in this context and I think accepted that there was a need to try to find a solution to what was obviously a process that was not necessarily going to give rise to good outcomes.

In that context he put up for discussion a proposal that maybe the process could be brought under the auspices of the Trade Practices Act to be policed by the ACCC. I will not go into the details on that because the particular proposal was no more than that; it found no favour with the various jurisdictions around the traps.

Following on that—and it is alluded to in the conclusion of our submission—we thought it was necessary to try to get closer to the COAG action that was going on. As far as we were concerned, what was happening in the COAG context lacked transparency. Therefore, towards the end of last year, we opened up consultations with the chairman of the committee on regulatory reform, which is an intergovernmental committee of officials which has the task of, under COAG, addressing the legislative review process, and that sort of thing. The outcome of those consultations yet remains to be seen. But I am hopeful, and it has been indicated to us, that we will receive an invitation to go before that committee to put our point of view.

That there are problems with this legislative review process, as presently being pursued by the various separate jurisdictions, is demonstrated by some evidence. In that, I would cite the guidelines for NCP legislation reviews that Mr Samuel referred to this morning, which the National Competition Council has just released. Also, this committee on regulatory

review under COAG is about to issue guidelines for the review of professional regulation which are designed, as I understand it, to try and get some consistency or cohesion into this whole area. I think that is very good so far as it goes. It is unfortunate that it has come 18 months or two years into the process. From the point of view of the professions at large, it still falls a little short of what our argument is, and that is that the only way to proceed is by way of national review. Thank you, Mr Chairman.

Senator MARGETTS—We have been told—and I have asked this question of other witnesses—that the problem is largely the fact that people are not sufficiently informed of the public interest provisions of the bill, and so it is ignorance of those provisions and not an unwillingness to use the current public interest provisions. I assume you have had legal advice as to the public interest provisions. Are the public interest provisions for the organisations you represent sufficient, and, if not, what should be done, in your opinion, to deal with that issue?

Mr Hunter—I am not in a position to speak for the individual constituent bodies.

Senator MARGETTS—Sure.

Mr Hunter—They are talking themselves in these areas. In terms of the national interest provisions, we have noticed—and this was particularly in the earlier stages—that, when a legislative review exercise was set up and the terms of reference were drawn up, there was usually a lot of emphasis and clear delineation of how to go about measuring costs. But, in terms of measuring benefits, it was a far different thing, because on one side it is relatively easy to talk about quantitative procedures and on the other side, where you are looking at qualitative type of considerations, it is not as easy. In one particular case of one profession, in the first regulatory review, the benefits test was no more than those very broad tests that come out of the competition principles agreement.

Senator MARGETTS—What you are saying is that the benefits end up being judged in their own terms?

Mr Hunter—Yes. I think what I am saying is that it seems to me that, when a profession, or the legislation affecting a particular profession, is coming up for review, there is a real need to draw up balanced terms of reference that relate to that profession. I know there is argument both ways as to whether the profession that is being reviewed should be represented in the review process, and I can accept that, but I think there is a very strong argument that, when terms of reference for a review are being drawn up, there should be consultation with the profession to try and get the appropriate degree of balance into the terms of reference. I think that is a general sort of a feeling.

Senator MARGETTS—There is obviously consumer interest also within decisions made in relation to reviewing professions, competition and so on. How might the current review process gain a national perspective? Have you got an idea or have you set out a model for what would be a good process for opening out this review process?

Mr Hunter—Not a model as such because I think the task in front of us is to convince nine separate governments that it is better to do this in a collective way rather than

separately. If you at once got acceptance of that general principle, I think the model or models would be drawn up quite appropriately in relation to each profession that is affected. I do not think you necessarily need to have 'a one model for all' in this sort of context.

Senator MARGETTS—Who, in each of the state governments, are you dealing with? We have had some indications that there are different bodies overseeing competition in general but, in terms of your professions, what range of bodies within the state governments are you having to deal with on these issues and what kind of expertise do they have in the areas that you are interested in?

Mr Hunter—From the council's point of view, we would be looking to discuss these sorts of issues with, say, Premier's departments or treasuries because, as I say, one of the motivations in this exercise is the crock of gold at the end of the rainbow and any state administration will want to ensure that it is safe—

Senator MARGETTS—Attracts payments, you mean?

Mr Hunter—Yes. This is the competition policy dividend, sort of thing. On my observations in most states and territories, the focal point for this in policy terms is Premier's department and/or treasuries. It is these departments that I think are largely represented on this committee on regulatory reform to which I referred earlier and which we, as a council, want to get alongside. In so far as the individual constituent bodies are concerned when they are talking in the states, their legislation would be being reviewed by the department or ministry responsible for that particular profession. They would be doing that in terms of whatever instructions they were getting from the centralised parts.

Senator MARGETTS—Are you in communication with any similar bodies? One of the countries that has gone through national competition policy, I guess soonest, was Britain. Is your organisation in communication with similar organisations in Britain and have you got any experiences you can pass on?

Mr Hunter—Not closely, no.

Senator MARGETTS—Can you tell us, if you know about how professions are regulated in other countries, what might be the difference between the way professions are regulated in countries like New Zealand, UK or the USA? Is there a difference currently in Australia between the way professions are regulated?

Mr Hunter—I could not give you a specific answer on that. I would expect that as, in Australia, professions in the health services area will tend to be more closely regulated in legislative terms than at the other end of the accountancy professions. We have not done any in-depth research on this.

Senator MARGETTS—Maybe that is a question I will need to ask the individual bodies.

Mr Hunter—I suspect that is the way to go. They have the resources to answer that much better than the council does.

Senator MARGETTS—If I were to be brutal, and give you the comment that the professions are simply looking after their own self-interest, how would you respond to that?

Mr Hunter—I think in effect that is answered in our submission there. That is a charge that is made from time to time. To me, it tends to dodge the need to sit down and really address what is a fairly important and fundamental question—and, admittedly, a complex one. The short answer is: if you look at what constitutes a profession in our terms, where the benefit of the community is paramount before the profession or the practitioner, that is what constitutes a profession in our terms. It is an easy charge to make that it is all self-interest. I think history would show otherwise.

Senator MARGETTS—In the United States they have very strong liability laws. In countries like the United States would they even dare to take any move which might leave it to the consumer to be able to choose who is a real doctor or a real lawyer or a real engineer? Would they be concerned about moving in that direction because of the liability laws and the government being sued for not protecting consumers?

Mr Hunter—Protecting professional standards?

Senator MARGETTS—Yes.

Mr Hunter—That is an interesting concept. I have not heard it raised in the Australian context that way. I have certainly heard the question of professional liability raised, but in a somewhat different context.

Senator MARGETTS—I guess the image that comes to mind is getting the cheapest quote to build a bridge at the Jewish games and what happens when you concentrate on those issues which become a dollar focus?

Mr Hunter—I think that is precisely what we are trying to say in our submission. The maintenance of professional standards must be a public good in the sorts of terms that you are talking about, so that we do not build those sorts of bridges because professional practice, ethics and standards will work against that sort of thing.

Senator MARGETTS—Thank you.

CHAIR—The nub of the problem is surely this. A large number of your members sell services or their labour or whatever. They are called professionals and yet the ACCC, in particular, is out there to make sure that there are not price fixing arrangements which artificially increase the price of those services to the community. How do you draw the line between these sorts of problems? How do you determine what is a reasonable professional fee and what is a professional rip-off, because, with all due respect to some of the members that come under your umbrella, I think most people around this room, and certainly around Australia, have paid through the nose for professional services. In fact, when they have checked around, they have found that there is certainly evidence of price fixing cartels. How do you determine this? How can you somehow or other strike a balance between the two? How can you ensure that the public is not being ripped off?

Mr Hunter—I guess the short answer is: that is why we have an ACCC and a Trade Practices Act. As far as the professions are concerned—and this is not something the council deals with in an overarching way—the individual professions that are members of the council have codes of ethics which are enforceable by the profession. In terms of their broad professional practice, that is the essence of a profession and the self-regulation and self-policing of that. Price is a matter that is being addressed now in the context of your Trade Practices Act and the operations of the ACCC.

CHAIR—There are a whole range of services and labour out there that I will employ. If I want to employ a tradesperson, I dare say there are award wages for that person still in effect. I guess there are others covered under various other arrangements that have gone through this place and some of the state regimes over the last four or five years. At the end of the day, I go and buy those services and I pay X number of dollars for those services. How do you draw the line between that and professional services, which are covered very differently and do have government agencies such as the ACCC overseeing what they charge?

Mr Hunter—The price of professional services is determined by the market for those services. But the difference between that sort of a market and a normal commercial market is the asymmetry of knowledge between the provider of the services and the consumer. That is where professional ethics and practice come very much into play.

The professions would be determining their attitude towards pricing in the environment that they now find themselves in, which, as I said before, is the Trade Practices Act and the ACCC as they impinge on the market for the provision of professional services, but tempered by the need of professional practitioners to have account of the requirements of their own profession.

CHAIR—Thank you very much for your evidence, Mr Hunter.

Proceedings suspended from 3.33 p.m. to 3.44 p.m.

FISHER, Mr Neil, Executive Director, Grains Council of Australia

CHAIR—Welcome. We do prefer all evidence to the committee to be given in public, but should you at any stage wish to give part of your evidence or answers to specific questions in private you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement, and at the conclusion of your remarks I will invite committee members to ask you questions.

Mr Fisher—Thank you, Senator. The Grains Council of Australia is the peak body of the Australian grains industry, representing some 60,000 grain growers. The council is a non-government grower funded federation of farmer organisations from Australia's five main grain growing states. The council's members and associate member bodies are the Western Australian Farmers Federation, the South Australian Farmers Federation, the Victorian Farmers Federation, the New South Wales Farmers Federation, the Queensland Grain Growers Association and the Tasmanian Farmers and Graziers Association. The council is also a major commodity member of the National Farmers Federation, which represents over 120,000 Australian farmers.

The council's fundamental objective is to maximise the economic and social welfare of Australian grain growers by seeking to initiate and influence policies and interact with government on issues which affect their profitability and, very importantly, their international competitiveness. The council's policy interests extend from macroeconomic and microeconomic reform of Australia's economy, including the cost effectiveness of land and sea transport, farm inputs and grain export inspection, to research development and extension policy, grain marketing and handling arrangements and trade strategies, international trade reform, and strategic planning for the industry's future.

The council has a keen interest in national competition policy because of the benefits that the grains industry and the wider community can achieve from a more efficient Australian economy. However, we are concerned that the fundamental objective of NCP may be overlooked in the implementation process. That is, competition can enhance community welfare because of its positive impact on economic inefficiency and other social goals. The council welcomes this opportunity to place our views on the NCP before the Senate select committee.

The council's submission argues that a key determinant of the socioeconomic impact of national competition policy is the effect of national competition policy measures on the international competitiveness of the Australian industry. While the timely and effective implementation of NCP is essential for developing an efficient Australian economy and enhancing our international competitiveness, it should not be assumed that increasing competition will, under all circumstances, be of benefit to the Australian community.

In the first instance, NCP reviews of anti-competitiveness arrangements must take account of the fact that the benefits of competition can be derived either from international or domestic competition. Secondly, it must be recognised that the focus of NCP reviews is on arrangements which affect competition in the domestic market and, further, that such arrangements need to be distinguished from arrangements designed to maximise returns from the international market. Accordingly, providing they operate transparently and efficiently

and confer a net public benefit to the Australian community, anti-competitive structures that have been established to assist industries to compete in the international market should not be discontinued as a result of the NCP review process.

In the case of the grains industry, we are the largest of Australia's primary production industries. Grain production accounts for about one-quarter of Australia's total farm gross value of production and around one-quarter of the value of total Australian farm exports. For the year 1996-97, the Australian Bureau of Agricultural and Resource Economics estimates that the total gross value of production for the Australian grains industry was \$7.5 billion, of which around \$6 billion was earned from exports. In 1996-97 Australia exported nearly 80 per cent of the total value of Australia's grain crop. In the case of wheat, in 1996-97 90 per cent of the total \$4.7 billion earned by wheat growers was earned from exports.

These statistics clearly show that, if NCP initiatives do not take account of the international competitiveness of Australian industry, they will have an adverse impact on those employed in these industries. In the case of the grains industry, this would not only include those directly employed in grain production but also those involved in other aspects of the grains industry, including, for example, inputs into grain production such as chemicals and machinery, research and development, bulk handling, storage and transport, grain marketing, and financial services. Increases in unemployment also increase dependency on social welfare and add to social dislocation.

In the case of primary industries, these effects would impact disproportionately on rural and regional Australians due to their higher dependence on income derived from primary production, including grain production. Consequently, when an assessment is made during NCP reviews of the net aggregate community welfare accruing from increased competition, NCP reviews should also take into account the geographical distribution of the benefits and costs. For those communities bearing the costs of any change, an assessment also needs to be made of their propensity to adjust, the alternative opportunities available to them and the necessity for relevant governments to provide appropriate adjustment assistance.

CHAIR—Thank you, Mr Fisher. Senator Mackay.

Senator MACKAY—I am interested in the fact that you highlight in your submission that we do not live in a global level playing field, and that in fact there are not just your industries that you represent but—across the plethora of Australian industries—a number of tariff and non-tariff barriers that are erected. You mentioned a couple in relation to the barley subsidy and flour millers and so on with regard to the EU. What sort of response have you had from the NCC in relation to these views, because it is a very pertinent point, I think.

Mr Fisher—We have not had any formal exchange of views with the NCC. They are aware, I think, that the Grains Council of Australia is a strong supporter of the single desk. I think some of the statements that we have seen emanating from the chairman of the National Competition Council indicate that they are still of the predilection that the removal of single desk monopolies will still provide advantages to the wider community. I am not sure they are convinced of the arguments put forward by, for example, the Grains Council that we

have to compete globally and that there has to be a distinction drawn between competition on the domestic market and competition on the export market.

If you look at our submission, we state that over 80 per cent of our production is exported and we have to compete against the United States and the European Union. Because of that, we have to accept world parity pricing. Because of that, there is a view that we are a very competitive industry. The difficulty that we have in convincing the NCC is that to be able to compete globally we have to establish a critical mass. If you look at our submission, again, we are about the third largest exporter of grain but we are about the 10th largest producer. We believe that we need instruments, particularly while the world trade is corrupted, to provide that critical mass for us to be able to compete against the Europeans and the United States.

Senator MACKAY—Are you aware of whether the National Competition Council have considered the global situation within which your industries compete? Have they taken account of the international competition rather than simply national competition?

Mr Fisher—To be fair to the NCC, I do not think they have at this stage. Under the time line, the single desk monopoly for AWB has to be reviewed by the end of the year 2000, and I think they are waiting for that review process to have a formal input into those discussions. At this stage, it has not been determined, under the timetable, when the review will occur, and that has been complicated by the fact that the AWB will only be privatised on 1 July this year. I know the minister and the Grains Council are of the view that, before we have the single desk reviewed, there should be an opportunity for the privatised Australian Wheat Board to establish a track record in the international marketplace so that when we do have a review we are comparing apples with apples or wheat with wheat.

Senator MACKAY—So, as far as you are aware, there is this view that the single desk monopoly ought to be disbanded in the fullness of time?

Mr Fisher—To be fair to the chairman of the NCC, I have only seen public statements attributed to him where he talks about the advantages of competition and the fact that we operate in a global environment. If these structures can be provided without legislation, that would be a more favourable view for the wider community. We have invited the NCC to participate in our annual conference during Grains Week on 13, 14 and 15 April. The executive director of the NCC, Mr Ed Willett, has taken up that opportunity to come and talk to our council. So, at this stage, I am not aware of any other position by the NCC than that.

Senator MACKAY—Thanks, Chair.

CHAIR—Thank you very much. Senator Murray.

Senator MURRAY—Mr Fisher, has your organisation got different views now to the whole program, policy and agenda of the NCC than you did when they were first kicked off and established in legislation?

Mr Fisher—I do not think so. I believe that the Grains Council's policy has for a number of years been supportive of the single desk for the Australian Wheat Board. In terms of national competition policy, while we understand that it is a lot broader than just looking at the single desk for the Australian wheat industry, our focus has been on that. Our policy on that has always been united.

Senator MURRAY—But you are very concerned with input costs to your industry such as infrastructural costs, energy supply, electricity, the provision of services, and also, of course, the professional level. Farming organisations rely very heavily on professional advice and all that sort of thing. So there is much more to it than simply the export relationship. I just wonder, because of your pivotal position in farming generally and in rural and regional Australia, whether the experience of competition policy has in fact overall delivered benefits or delivered disadvantages, or whether it is a mixed bag and whether that has affected the way in which you view it outside of your international competitive needs?

Mr Fisher—The council is of the view that the least number of sellers in the marketplace will maximise our profitability, and, if you are purchasing services, the more competition the better. So we draw a distinction between buying and selling. We are aware that national competition policy—if not directly, through the introduction of competition and when our guys are purchasing chemicals or storage or transport—has some advantages.

Senator MURRAY—You would appreciate the apparent inconsistency of that statement because, for instance, when you look at your industry you talk about yourself as a seller and then buying from your suppliers of whatever kind. They, of course, in turn are sellers, and they would rather there only be one or two for the obvious reasons. Are you drawing a clear distinction between as open and competitive in an Australian domestic market as possible, and as managed and controlled an Australian export as possible, or are you merely saying that because of the special circumstances of your industry as a commodity based industry you have to be differentiated?

Mr Fisher—No. I think closer to the second part of your statement. The council is very aware that competition can provide us with benefits, but we do not want to be locked into an artificial time frame where the benefits that are being provided by the single desk are removed arbitrarily by a national competition review when we have not seen the level of reform that we require in the international marketplace for us to give up the single desk.

At the next WTO round, if the heavens open up and the United States and the EU say, 'There'll be no more export subsidies; there'll be no more de facto subsidies and the level playing field will exist', obviously the Grains Council would look very, very closely at our single desk mechanism because we only support it while the international marketplace is corrupted and where we believe it is providing advantages to growers in the wider community.

Senator MURRAY—Just glancing back through your recommendations, I would expect this committee in due course to form a view, philosophical if you like, on the issues of competition and then to move into recommendations on policy, and, thirdly, to move into recommendations on legislative change. I assume it is the intention of your recommendations

that those three areas are dealt with. You have not really drawn attention to specific amendments you would want to the enabling legislation of the Competition Council.

Mr Fisher—No. What we have tried to draw to the committee's attention is that we understand that there must be a framework for reviewing legislation. We appreciate that. But we believe that there should be some flexibility within that framework to ensure that, when a particular piece of legislation is reviewed under national competition policy, it has the capacity to be viewed at the appropriate time.

For example, if we were suggesting an amendment—and I stress that it is only a suggestion—if we were suggesting a review of the single desk, our submission makes the point that it would be better to review it after we have known the outcomes of the WTO round and the sorts of structures that are being put in place or dismantled, more to the point, by our competitors, rather than say, 'Well, under national competition policy, we have to review every piece of legislation by the year 2000', which does not take into account the global circumstances.

Senator MURRAY—So you are saying it should be relevant to world events which affect trade and so on?

Mr Fisher—Yes.

Senator MURRAY—The other question I have for you is this. Organisations always claim to represent so many thousand members, but it is beyond dispute that, wherever there are large masses of human beings, you always have people who do not agree with you. How do you believe, given the nature of your submission, that we, in this inquiry, should cope with the question of choice?

Let us assume that out of your 60,000 there were 1,000 farmers who wished to do their own thing. Choice is a mantra of the present government. How do we deal with a genuine expressed need for people to be able to trade and manage their situation as they see fit?

Mr Fisher—It is a difficult question, because I am here representing the Grains Council of Australia and our five state affiliates. Unlike some other forums I have been in, in this place, I can honestly say that, for once, the Grains Council is totally united on the retention of the single desk from all our state affiliates.

We are aware that, within your state, Senator, the Pastoralists and Graziers Association philosophically are opposed to the single desk, and we acknowledge their right to have that opinion. As to how the Senate committee can address the issue of choice, I am not really sure, because our members take the view that you have a single desk or you do not, and to provide flexibility for people to export wheat in competition with the Australian Wheat Board actually breaks down the single desk.

We have been trying to work with some of those groups, for example, the durum growers in northern New South Wales, to come up with some sort of permit arrangement where those people have the freedom of choice to participate in markets which are either not commercially large enough for the Australian Wheat Board to participate in, or are niche

markets in terms of no chemicals, or something like that. But it is a very difficult question, because we appreciate that there are some growers who do not support the single desk. But our organisation is of the view that the single desk provides the greatest benefits to the greatest number of producers, and hence to the wider Australian community, albeit there are some critics of it.

Senator MURRAY—Is one mechanism for relieving the pressures that those things generate some kind of arbitration or mediation process, so that people's genuine concerns can be independently assessed and the system made as flexible as it can be?

Mr Fisher—We hope that we have done that under the current wheat marketing legislation by the establishment of what is now called the Wheat Export Authority. As you are aware, the government has given the Australian Wheat Board the single export desk, but it has put in place in the legislation the Wheat Export Authority, whose role is to monitor the way the Australian Wheat Board uses the single export desk.

This will be an independent group that will look at the way the AWB uses the single desk, whether it is efficient and whether it is passing benefits back to growers in the Australian community. And it will also act as, for want of a better word, an umpire in that, if a group of grain growers decide that they do have a niche market which the AWB cannot service or will not service and they have applied for an export permit for that arrangement and they have been refused by the Australian Wheat Board, they can apply to the Wheat Export Authority and that umpire group will make a decision as to whether they have a case or not. So it is a vast improvement on the previous situation under the previous legislation where the Wheat Board had the single desk and that was it.

Senator MARGETTS—You say that you have five state affiliates. What has been the main connection between your state affiliates and your own organisation in relation to national competition policy? Have you been dealing more with the National Competition Council, the ACCC or the various state bodies, or with a variety of all of those groups?

Mr Fisher—The Grains Council of Australia itself has entered into some discussion on an informal level with the ACC and also with the NCC. The GCA state affiliates have all been involved in their own separate reviews under national competition policy for their various state marketing arrangements. So it has probably been a matrix of all of that in that the states, because of their experiences under their reviews, have brought issues to the federal council which have been debated within the federal council—predominantly issues relating to single desk powers for either state or now AWB legislation.

Senator MARGETTS—What sorts of resources are involved in these kinds of interactions?

Mr Fisher—Do you mean human resources?

Senator MARGETTS—Yes.

Mr Fisher—In view of the fact that the AWB single desk is to be reviewed, the Grains Council has just put on a research officer whose sole function is to work with the Grains

Council and the state affiliates in preparing our case for the review of the AWB single desk and to work with the GCA state affiliates in relation to the remaining reviews. I think the grain pool of WA is about to be reviewed, and I think the marketing legislation in Queensland is up for review. So we have put a dedicated person on staff who was a former employee of the ACCC.

Senator MARGETTS—Do you know if your affiliates are happy to put on similar liaison people or research people?

Mr Fisher—I doubt whether the state affiliates are putting on extra staff. They are trying to coordinate it through the Grains Council, and we coordinate it back through them.

Senator MARGETTS—It sound like there are quite a lot of compliance costs involved, though.

Mr Fisher—Yes.

Senator MARGETTS—The wheat bill was an issue where national competition policy was brought up on a number of occasions. I guess this is one step back from the single desk issue. We were advised that the advice given by the minister was that the wheat bill had to be in a certain format because of national competition policy. Was that the same kind of advice you were given?

Mr Fisher—We would like to turn it around the other way, Senator. The Grains Council would like to believe that we have convinced the government that the structure we have put in place, using independent expert advice, provides the industry with the best case of retaining the single desk under national competition review. You will note from our formal submission that we have attached a confidential submission that we believe outlines—

Senator MARGETTS—Sorry, I was not actually referring to single desk; I was referring to cooperative management versus corporate management.

Mr Fisher—The Grains Council, as you know, was divided on that issue. Four of our state affiliates supported the structure as it is, and the Western Australian Farmers Federation are still supportive of a cooperative structure. The majority opinion within the council is that the structure we have put in place enhances our capacity to retain the single desk under NCC.

Senator MARGETTS—My understanding was that, for those people arguing for different structures, part of what they were told again and again by the minister's office was that they could not do it in a different way because of the constrictions of the national competition policy. Is that your understanding?

Mr Fisher—I think that is part of it, but to say that national competition policy implications were the reason we did not look at alternative structures is taking a long bow. The Grains Council tried to take a holistic approach to the structure.

Senator MARGETTS—I understand what you are saying: you are saying that you believed there were positive reasons for wanting to go in a certain direction.

Mr Fisher—Yes.

Senator MARGETTS—I was just trying to see why the arguments being given to those people who wanted a different structure were again and again that there were things they could not do because of national competition policy.

Mr Fisher—I would say that one of the arguments against the structure proposed by the Western Australian Farmers Federation was that it could have implications under NCC—one of them.

Senator MARGETTS—Today, we have heard from Graeme Samuel that state and federal ministers, certainly, in the past, over the last few months, have not been as knowledgeable on national competition policy as they might be. Is that your experience as well?

Mr Fisher—I do not think it is appropriate for me, as the executive director of the Grains Council, to pass an opinion on our ministers as to their knowledge of the national competition policy.

Senator MARGETTS—All right. How have you utilised the public interest provision of the legislation and how useful has that been for your organisation?

Mr Fisher—The Grains Council has not. Some of our state affiliates have tried to use that provision, particularly the Victorian Farmers Federation and the South Australian Farmers Federation. It is premature for the Grains Council at the moment to indicate what our strategy will be in developing our case to retain the single desk. However, obviously one of the issues that we will be focusing on, in any submission or arguments, will be the position that you just referred to. That is going to be something that we believe that we can demonstrate in the public interest.

Senator MARGETTS—There is a lot within the farming community that depends on a cooperative approach to things. Is that your experience as well?

Mr Fisher—I would hesitate to use the word ‘cooperative’ because of the politics surrounding the word ‘cooperative’.

Senator MARGETTS—Can a farmer compete adequately on their own, one to one?

Mr Fisher—Internationally?

Senator MARGETTS—Yes.

Mr Fisher—No, domestically, yes. I draw a distinction between that because, if you look at our submission and you look at the critical mass issues, we are a very small producer, but a very large exporter. So we have to develop some critical mass on the export market to be

able to compete. On the domestic market, depending where a grower is situated, he could have access to a domestic market and he could be able to compete effectively on his own, particularly if he lives on the eastern seaboard, just because of the size of the domestic market. However, if you took a grower in the middle of the Eyre Peninsular in South Australia, or in the eastern wheat belt in Western Australia, they do not have access to a domestic market. Their transport costs are significant. They farm in a fairly difficult environment and they still believe there are significant advantages for them to go through a cooperative arrangement through the Australian Wheat Board. That gives them that access to the international market and also to the domestic market. It also gives them that protection because the AWB can take positions on Chicago, et cetera, where they just have not got that size to be able to do it.

Senator MARGETTS—Changing the subject a bit, you mentioned the speed at which the review is taking place, but also a number of organisations have criticised the review process in terms of the lack of national scope, lack of independence and transparency and the lack of consultation. Is that your experience as well in any of those elements?

Mr Fisher—It has not been the Grains Council experience because we have not been through an NCP review of the AWB. It has been the experience of some of our state affiliates who believe that there has not been a great deal of consultation, particularly where governments have devolved their responsibility to undertake the review, for example, to private consultants. Our state affiliates believe that the consultants who are charged with the responsibility could have consulted more, could have debated the terms of reference and could have made that process a lot more transparent and accountable. That is not the Grains Council position at this time.

Senator MARGETTS—If we were to say there are elements of national competition policy where we need to go back to the drawing board and improve them, can you suggest a process by which that might take place?

Mr Fisher—Obviously not; otherwise we would have it in our submission. What we are concerned about—at the risk of repeating myself—is that there has to be some recognition in the process that, while the timetable is fine, there has to be recognition that the timetable must take into account global events as well.

Senator MARGETTS—Are your members telling you the timetable is fine?

Mr Fisher—If they had their way, our members probably would not want the single desk ever reviewed, but they realise that it is a COAG agreement. They understand that all pieces of legislation have to be reviewed by the year 2000. This week we have consulted our state affiliates as to when they believe would be the most appropriate time frame to review the single desk. They say, given that it has to be reviewed by the year 2000, May-June next year should be fine.

Senator MARGETTS—I hope I am not paraphrasing you too much, but you obviously seem to think there are some advantages for you of having a timetable for review. Obviously, you recognise that some of your members are not as happy with some of those timetables.

Mr Fisher—No. If I gave you that impression, that is wrong. The impression I want to give is that the Grains Council of Australia believes that it is artificial to say, ‘Let’s review the single desk of the AWB by the year 2000’ because we are not too sure what is going to come out of the next WTO round, so we want that as a recognition. Given that the government has decided that this thing has to be reviewed, our preference would be for the review of the single desk to take place as late as possible under the agreed time frame. We want AWB Ltd to have as long a period as possible from its privatisation on 1 July to demonstrate a track record, so that when we go through the review process the new structure is being reviewed and not the previous structure. The third part of your question was whether some of our members have disagreement with the time frame. No, we have not determined what the time frame should be, but we would like it to be as late as possible within the guidelines set by the government.

Senator MARGETTS—Who is driving it? What is the point of accountability with the national competition policy? What is your impression of where the driving point is and where you go to if you have a problem?

Mr Fisher—It is difficult to pinpoint where the driver is for national competition policy, given that it has been agreed by the government and the opposition federally, and it has been endorsed by all state governments as well.

Senator MARGETTS—Who is in control of it now?

Mr Fisher—You would have to assume—and I use the word ‘assume’—that the federal government is now in control of the agenda.

Senator MARGETTS—We heard some comments today that the federal government has farmed off some elements to the state which would make it almost impossible for the federal government to control it.

Mr Fisher—I would not like to comment on that. What I would comment on, given that we are the national organisation dealing with the national issues, is that we would assume the federal government is in control of legislation, either through the NCC or the ACCC.

Senator MARGETTS—Normally, if you have a problem with a federal government policy or legislation, do you go straight to a minister?

Mr Fisher—Yes.

Senator MARGETTS—Is that the way you would deal with this issue of national competition policy?

Mr Fisher—We had informal discussions with the Minister for Agriculture, Fisheries and Forestry at four o’clock yesterday afternoon as to when the timetable will commence, his view of the dates, who will conduct the review, et cetera. His advice was that he would seek clarification on the issues that we raised with him yesterday.

Senator MARGETTS—You talk about a theory that national competition would benefit the community. How would you see the theory being tested on an economy-wide basis as to whether there are really benefits? I take you back to 1995. If you were with the Grains Council of Australia in 1995, did the council and other bodies like yours have any real idea of what the implications of this policy were going to be back then?

Mr Fisher—Thankfully, I was not at the Grains Council of Australia in 1995. I could only assume that they were aware. I know that there were concerns within the grains industry, given that we were seen to be continually under review—and, in particular, about the single desk. It was given a five-year time frame. Back in about the early and mid-1990s, the council was hoping that when the new structure was put in place there would be some breathing space for at least 10 years without having the single desk continually reviewed. I know that the organisation was disappointed when they were working constructively with the then government, and the previous government, to try to put in place a restructure of the Australian Wheat Board.

Both the government and the opposition had a predilection to provide the single desk for a period. When they started getting those sorts of agreements from the government, they suddenly realised that, regardless of those sorts of structures and agreements put in place, that still had to be reviewed under national competition policy.

Senator MARGETTS—These other changes may have come in a fairly arbitrary way simply because they were attached to the national competition policy.

Mr Fisher—Yes.

Senator MARGETTS—The other part of the question is: how would you see the theory that national competition policy being tested would benefit the community?

Mr Fisher—From the Grains Council of Australia perspective, we hope to be able to test the theory when we prepare our case for the single desk.

Senator MARGETTS—I did not say that. Never mind, we will have to leave that to the keeper.

Mr Fisher—Thank you.

CHAIR—Thank you very much, Mr Fisher. We have had a long day.

Mr Fisher—Thank you for your time.

Committee adjourned at 4.20 p.m.

